Department of Commerce Grants and Cooperative Agreements Manual

Grants and Cooperative Agreements Manual

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This manual is for internal Department of Commerce use only. It is to be used by operating units, grants offices and all involved in the grants and cooperative agreements lifecycle. This manual is maintained by the Grants Management Division within the Office of Acquisition Management.

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PREFACE

A. The Department of Commerce (DOC) was established on February 14, 1903, to promote American businesses and trade. Its broad range of responsibilities include but are not limited to, expanding U.S. exports, developing innovative technologies, gathering and disseminating statistical data, measuring economic growth, granting patents, promoting minority entrepreneurship, providing effective management and environmental stewardship of the nation's coastal and marine resources, and predicting and monitoring the weather. Although DOC's missions are very diverse, they are unified by one overarching mandate – to work with the business community to foster economic growth and the creation of new American jobs to ensure sustainable economic opportunities.

B. There is no general Department-wide financial assistance authority. Such authority must be provided by specific statute. The Federal Grant and Cooperative Agreement Act of 1977 (31 U.S.C. § 6301-6308), in and of itself, does not provide such authority. The operating unit's basic legislation must be analyzed to determine whether an assistance relationship is authorized, and if so, under what circumstances and conditions. The following operating units are authorized to provide financial assistance:

1. Economic Development Administration (EDA). The Economic Development Administration (EDA) was established under the Public Works and Economic Development Act of 1965 (42 U.S.C. § 3121 *et seq*.), as amended by the Economic Development Administration Reauthorization Act of 2004 (Pub. L. No. 108-373, 118 Stat. 1756 (2004)) (PWEDA). As set forth in EDA's regulations at 13 C.F.R. Chapter III, EDA's mission is to lead the federal economic development agenda by promoting innovation and competitiveness, preparing American regions for growth and success in the worldwide economy. EDA investment assistance is available to rural and urban areas of the Nation experiencing or threatened with substantial economic distress, including high levels of unemployment, low income levels, significant declines in per-capita income, sudden major lay-offs or plant closures, or natural or other major disasters. In fulfilling its mission pursuant to PWEDA, EDA advances economic growth by assisting regions experiencing chronic high unemployment and low per-capita income to create an environment that fosters innovation, promotes entrepreneurship, and attracts increased private capital investment. Additionally, EDA helps communities experiencing adverse economic changes due to base realignment and closures, defense contractor reductions in force, U.S. Department of Energy defense-related funding reductions, and Federally-declared disasters. EDA works in partnership with eligible applicants, including State and local governments, district organizations, public or private non-profit organizations, Indian tribes, and institutions of higher education. Under the Trade Act of 1974, (19 U.S.C. 2341 *et seq*.), as amended, EDA also provides technical assistance to firms that have been adversely affected by increased import competition (see 13 C.F.R. Part 315).

2. International Trade Administration (ITA). The International Trade Administration is responsible for most non-agricultural U.S. trade issues and works with the Office of the U.S. Trade Representative in coordinating U.S. trade policy. ITA operates through four principal units: Market Access and Compliance, Trade Development, Import Administration, and U.S. and Foreign Commercial Service. ITA

provides grants and cooperative agreements through several programs to promote trade, investment, and commercial relations, and maintains comprehensive commercial and economic data on particular countries and regions of the world. ITA grant and cooperative agreement programs are also intended to strengthen domestic export competitiveness, and promote U.S. industry's increased participation in international markets.

3. Minority Business Development Agency (MBDA). The Minority Business Development Agency is the only Federal agency created specifically to foster the establishment and growth of minority-owned businesses in the United States. Through grants and cooperative agreements, MBDA provides financial assistance to public and private organizations that provide a wide-range of business development services to minority entrepreneurs through a nation-wide network.

4. National Oceanic and Atmospheric Administration (NOAA). NOAA is a federal agency focused on the condition of the oceans and the atmosphere. It plays several distinct roles within DOC:

a. Supplier of Environmental Information Products. One of the most important resources in our society is information. NOAA supplies information to its customers that pertains to the state of the oceans and the atmosphere. This is clearly manifest in the production of weather warnings and forecasts through the National Weather Service, but NOAA's information products extend to climate, ecosystems and commerce as well;

b. Provider of Environmental Stewardship Services. NOAA also is the steward of national coastal and marine environments. In coordination with federal, state, local, tribal and international authorities, NOAA manages the use of these environments, regulating fisheries and marine sanctuaries as well as protecting threatened and endangered marine species;

c. Leader in Applied Scientific Research. NOAA is a trusted source of accurate and objective scientific information in four particular areas of national and global importance:

(1) Climate. Scientific information is needed to aid decision makers as they develop and evaluate options that mitigate the human causes of climate change and adapt to foreseeable climate impacts.
(2) Weather. Relevant weather information creates a society that is more adaptive to its environment; experiences fewer disruptions, dislocation, and injuries; and that operates a more efficient economy.
(3) Oceans. Marine fisheries, habitats, and biodiversity need to be sustained within healthy and productive ecosystems.
(4) Coasts. The complex interdependence of ecosystems and economies grows with increasing uses of land, marine, and coastal resources, resulting in particularly heavy economic and environmental pressures on the Nation's coastal communities.

d. NOAA's Vision. "Healthy ecosystems, communities, and economies that are resilient in the face of change."

e. NOAA's Mission. "To understand and predict changes in climate, weather, oceans, and coasts, to share that knowledge and information with others, and to conserve and manage coastal and marine ecosystems and resources."

5. National Telecommunications and Information Administration (NTIA). The National Telecommunications and Information Administration is the principal executive branch advisor to the President on domestic and international communications and information policies. It ensures effective and efficient Federal use of the electromagnetic spectrum, develops (with other Federal agencies) policies for international communications and standards-setting organizations, serves as the Federal telecommunications research and engineering center, and administers grants and cooperative agreements to public and non-profit organizations for projects that incorporate information and telecommunications technology.

6. National Institute of Standards and Technology (NIST). The National Institute of Standards and Technology (NIST) provides grants and cooperative agreements to aid U.S. industry through research and services, contributes to public health and safety, supports U.S. scientific and engineering research communities, and works with state and local organizations to either establish or expand existing services for small to medium sized manufacturers. These services address critical needs in areas such as production techniques, technology applications, and business practices.

C. The DOC administers a diverse array of programs and projects concerned with the entire spectrum of business and economic development concerns as outlined above. Departmental operating units and Grants Offices are responsible for the award, administration, and monitoring of these programs under a variety of legislative authorities, governing regulations, policies, and procedures utilizing mandatory and discretionary grants and cooperative agreements. Awards are made to a wide variety of recipients, including state and local governments, for-profit or commercial organizations, non-profit organizations, and educational institutions. The administration of DOC grant and cooperative agreement programs requires adherence not only to the program objectives for which funds are awarded, but also to sound business practices, as well as laws, regulations, policies, and procedures governing grants and cooperative agreements.

D. The DOC views its relationship with grant and cooperative agreement recipients as a partnership, with the recipient providing the effort and expertise necessary to carry out approved activities and the Department providing financial assistance and involvement as appropriate. In implementing these respective roles, DOC has established Grants Management Offices and Program Offices. Grants Management Offices serve as the focal point for the business management aspects of grants administration, including maintenance of official files and receipt of most required reports from award recipients. The Grants Officer is the DOC official authorized to award grants and cooperative agreements and make decisions on requests for any changes to or revisions of any aspect of awards, including but not limited to, terms and conditions, budgets, and program plans (i.e., scope of work). The Program Officers serve as the focal point for the programmatic, scientific/technical aspects of the programs and projects. Questions concerning interpretation of grant and cooperative agreement policy

or the applicability of certain policies to particular programs should be directed to the designated DOC Grants Officer.

E. Department-wide responsibility for developing and implementing financial assistance administrative and operational policies rests with the Office of Acquisition Management (OAM) under the Department's Chief Financial Officer and Assistant Secretary for Administration (CFO/ASA).

F. This Grants Manual ("Manual") is intended to provide a common understanding of the framework for the administration of grants and cooperative agreements within which DOC staff and responsible recipient officials must operate.

G. Questions concerning this manual should be directed to the cognizant Grants Officer or the Director, Office of Acquisition Management, U.S. Department of Commerce, Room 6422, Washington, D.C. 20230, telephone number: 202-482-4248.

2. INTRODUCTION

A. Purpose.

This Manual sets forth DOC guidance on grants administration and provides DOC with a uniform set of minimum procedures for federal funding announcements, including Federal Funding Opportunities (FFOs) and request for applications (RFA) reviewing, awarding, managing and closing out of grants. The Manual references policies and procedures for use by DOC offices and operating units for ensuring the consistent implementation of legislation, regulations, Office of Management and Budget (OMB) circulars, executive orders (EOs), and Departmental policies and procedures related to financial assistance. The Manual is for internal use by DOC personnel and does not create any rights or liabilities with respect to the public or any third party.

B. Authority.

This Manual is issued pursuant to the authority of 5 U.S.C. 301, Department Organization Order (DOO) 10-5, "Chief Financial Officer and Assistant Secretary for Administration."

C. Coverage.

This Manual applies to all DOC operating units in their award, management, and administration of grants and cooperative agreements. This Manual shall have the same force and effect as a Department Administrative Order (DAO). Amendments (substantive changes) or revisions (corrections or updates) to the Manual may be developed and issued by the Director, Office of Acquisition Management (OAM). Proposed amendments to this Manual will be distributed for review and comment.

D. Effect on Other Issuances.

This Manual provides guidance for the administration of grants, and supersedes all previous financial assistance directives, including notices and orders. DOC operating units may issue supplemental operating unit-specific policies and procedures to cover items not covered by this Manual to address programmatic requirements that do not conflict with the provisions of this Manual or to implement unique statutory requirements and regulations. If an operating unit has specific statutory or regulatory requirements which necessitate policies, procedures, or restrictions not covered by the Manual, the operating unit may develop supplemental policies and procedures addressing the specific requirements. The supplements must be consistent with this Manual. The heads of operating units or other appropriate officials of the operating units must submit supplements, and any revisions thereto, and an assurance that the supplement is consistent with the requirements in this Manual to the Office of Inspector General (OIG), the Office of General Counsel (OGC), and OAM for timely review and comment prior to internal issuance and use.

E. Government-Wide Requirements Used in the Administration of DOC Awards.

A list of government-wide requirements (e.g., regulations, circulars, executive orders) appropriate in the administration of grants funded by DOC includes, but is not limited to, the following:

l. Administrative Requirements.

a. 15 CFR Part 14, “Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, Other Non-Profit, and Commercial Organizations” (DOC codification of OMB Circular A-110, 2 CFR Part 215)

b. 15 CFR Part 24, “Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments” (DOC codification of OMB Circular A-102)

2. Cost Principles.

a. 2 CFR Part 220 (OMB Circular A-21), “Cost Principles for Educational Institutions”

b. 2 CFR Part 225 (OMB Circular A-87), “Cost Principles for State, Local, and Indian Tribal Governments”

c. 2 CFR Part 230 (OMB Circular A-122), “Cost Principles for Non-Profit Organizations”

d. 48 CFR Part 31, “Contract Cost Principles and Procedures”

e. Appendix E of 45 CFR Part 74, “Principles for Determining Costs Applicable to Research and Development under Grants and Contracts with Hospitals”

3. Other Requirements.

a. OMB Circular A-50 Revised, “Audit Follow-Up”

b. OMB Circular A-89 Revised, “Federal Domestic Assistance Program Information”

c. OMB Circular A-129 Revised, “Policies for Federal Credit Programs and Non-Tax Receivables”

d. OMB Circular A-133, “Audits of States, Local Governments and Non-Profit Organizations” and Supplement

e. 2 CFR Part 1326, “Government-wide Debarment and Suspension (Non-procurement)”

f. 2 CFR Part 22, “Government-wide Requirements for Drug-Free Workplace (Financial Assistance)”

g. 5 CFR Part 1320, “Controlling Paperwork Burdens on the Public”

h. 15 CFR Part 8, “Nondiscrimination in Federally Assistance Programs of the Department of Commerce - Effectuation of Title VI of the Civil Rights Act of 1964”

i. 15 CFR Part 8a, “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance”

j. 15 CFR Part 8b, “Prohibition of Discrimination against the Handicapped in Federally Assistance Programs Operated by the Department of Commerce”

k. 15 CFR Part 11, “Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs”

l. 15 CFR Part 13, “Intergovernmental Review of Department of Commerce Programs and Activities”

m. 15 CFR Part 20, “Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance”

n. 15 CFR Part 19, “Commerce Debt Collection”

o. 15 CFR Part 25, “Program” (Fraud Civil Remedies)

p. 15 CFR Part 27, “Protection of Human Subjects”

q. 15 CFR Part 28, “New Restrictions on Lobbying”

r. 15 CFR Part 1170, “Metric Conversion Policy for Federal Agencies”

s. 31 CFR Part 223, “Surety Companies Doing Business with the United States”

t. 31 CFR Part 900-904, “Federal Claims Collection Standards”

u. 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms under Government Grants, Contracts, and Cooperative Agreements”

v. EO’s 12549 and 12689, “Debarment and Suspension”

w. OMB Standard Form 424B, “Assurances – Non-Construction Programs” and OMB Standard Form 424D, “Assurances – Construction Programs,” which reference laws and regulations that may apply to particular awards

4. Statutory Requirements. Statutory authorities for grant requirements are contained in Chapter 15 of this Manual.

3. GLOSSARY OF TERMS AND ACRONYMS

A. Definitions.

1. Administrative Offset. Satisfying a debt by withholding money payable by DOC on behalf of a person (i.e., an individual, business, organization, or other entity but not an agency of the United States Government or any State or local government) to satisfy a debt owed the Federal Government by that person. See also 15 CFR Part 21.

2. Amendment. A substantive change made to an award. Examples of an amendment include, but are not limited to, the following: continuation, renewal, supplemental, no-cost extension, and budget revision.

3. Award. A grant or a cooperative agreement.

4. Award Date. The date that the Grants Officer signs the award document.

5. Broad Agency Announcement (BAA). A broad agency announcement is a notice of the potential availability of funds that: (a) is general in nature; (b) identifies areas of programmatic interest; (c) includes criteria for selecting proposals; and, (d) seeks the participation of any interested members of the public.

6. Budget/Cost Analysis. The review and evaluation of the reasonableness, allowability, and allocability of an applicant's proposed budget data and of the judgmental factors applied in projecting the estimated costs.

7. Close-Out. The process by which DOC determines that all financial assistance award requirements and applicable administrative actions have been completed by the recipient and DOC.

8. Competitive Award. An award made with discretionary funds after a solicitation of proposals has been published a Federal Funding Opportunity notice posted at Grants.gov and where DOC chooses a proposal based on merit review and the application of established evaluation and selection criteria. The DOC may also treat as competitive an award that was solicited and reviewed through another federal agency's competitive process or through a competitive solicitation process developed by several federal agencies acting in partnership.

9. Competitive Award Program. A financial assistance program under which funds are awarded on the basis of merit or need and to which an applicant is not entitled as a matter of law.

10. Congressional Direction. Any statement of legislative intent included in the Reports by the House, Senate, or Conference Appropriations Committees which directs DOC or its operating units to take action (or inaction) regarding its projects.

11. Continuation. An amendment that provides continued funding within the approved project period. Unlike a renewal, a continuation does not extend the project period; rather, it provides additional funding within an already existing project period. Continuation amendments are used with multi-year awards. See also Chapter 20 of this Manual.

12. Contract. The legal instrument reflecting a relationship between a recipient or subrecipient and contractor or between such contractor and subcontractor whenever the principal purpose of the relationship is the acquisition, by purchase, lease, or barter, of property or services.

13. Cooperative Agreement. The legal instrument reflecting a relationship between DOC and a recipient whenever: (1) the principal purpose of the relationship is to transfer money, property, services, or anything of value to accomplish a public purpose of support or stimulation authorized by Federal statute and (2) substantial involvement (e.g., collaboration, participation, or intervention by DOC in the management of the project) is anticipated between DOC and the recipient during performance of the contemplated activity. Cooperative agreements are subject to the same OMB, Treasury, and other Federal laws and policies as grants. See also 31 U.S.C. § 6305.

14. Cost sharing or matching. For Institutions of Higher Education, Hospitals, Other Non-Profit, and Commercial Organizations, cost sharing or matching is the portion of project or program costs not borne by the Federal Government. For State, Local and Tribal Governments, cost sharing or matching is value of the third party in-kind contributions and the portion of the costs of a federally assisted project or program not borne by the Federal Government. See also 15 C.F.R. §§ 14.2(j) and 24.3, respectively.

15. Credit Report. Any written or documented oral communication of information provided by a commercial or consumer credit reporting agency dealing with the creditworthiness or financial reliability of an applicant or debtor. The credit report is a useful tool which can assist program and grants management officials in determining an applicant's financial condition and capacity.

16. Delinquent Debt. A debt that has not been paid by the date specified in the agency's initial written demand for payment or applicable agreement or instrument (including a post-delinquency payment agreement) unless other satisfactory payment arrangements have been made. See also 15 C.F.R. § 19.1.

17. Department or DOC. United States Department of Commerce (DOC), unless otherwise indicated. As used in this Manual, "Department" or DOC includes the Office of the Secretary and the operating units.

18. Discretionary Award Program. A financial assistance program under which DOC can exercise its judgment in selecting to whom the funds are awarded.

19. Discretionary Funds. Funds for which DOC can exercise its judgment in selecting to whom the funds are awarded.

20. Equipment. Tangible, nonexpendable, personal property having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. For awards subject to 15 CFR Part 14, equipment also includes exempt property charged directly to the award.

21. Excluded Parties List System. The Excluded Parties List System (EPLS) means the list maintained and disseminated by the General Services Administration (GSA) containing the names and other information about persons who are ineligible. The EPLS system includes the printed version entitled, "List of Parties Excluded or Disqualified from Federal Procurement and Nonprocurement Programs," so long as published, as defined in 2 C.F.R. § 180.945. The EPLS is a widely available source of the most current information about persons who are excluded or disqualified from covered transactions, pursuant 2 C.F.R. § 180.500. EPLS is now a part of the System for Award Management (SAM), found at sam.gov.

22. Financial Assistance. A transfer of money, property, services or anything of value to a recipient in order to accomplish a public purpose of support or stimulation which is authorized by Federal statute. As used in this Manual, it includes only grants and cooperative agreements. This term is synonymous with "Federal funding" or "Federal assistance" as used in this Manual.

23. Fixed Year Funds. Funds, by the terms of an Appropriations Act, available for obligation only for a specified period of time. Most often this will be a one-year period, but it may be for several years. This term is synonymous with "time limited funds" as used in this Manual.

24. Funding Period. The period of time when Federal funding is available for obligation by the recipient. This term is synonymous with "budget period."

25. Grant. The legal instrument reflecting a relationship between DOC and a recipient whenever: (a) the principal purpose of the relationship is to transfer money, property, services, or anything of value in order to accomplish a public purpose of support or stimulation authorized by Federal statute and (b) no substantial involvement is anticipated between DOC and the recipient during the performance of the contemplated activity. The term "grant," as used in this Manual, refers to both a grant(s) and cooperative agreement(s), unless specifically stated otherwise. See 31 U.S.C. § 6304.

26. Grants.gov. Grants.gov is the official Federal government website that allows organizations to electronically FIND and APPLY for Federal grants.

27. Grants Officer. The DOC official who is responsible for all business management and administrative aspects of a grant and the DOC official with the delegated authority to award, amend, administer, close out, suspend, and/or terminate grants and cooperative agreements and make related determinations and findings. For those operating units with delegated Grants Officer responsibilities (EDA, NIST, OS and NOAA), the term Grants Officer, as used in this Manual, means the Grants Officers who are identified by the head of the operating unit.

28. Head of Operating Unit. The head of an operating unit includes Secretarial Officers and the heads of primary operating units, as defined in Department Organization Order (DOO) 1-1. The heads of some operating units are Program Secretarial Officers; in other cases, they are other officers who report and are responsible to a Program Secretarial Officer or directly to the Secretary or Deputy Secretary, as may be specified. See also Paragraph 39, "Operating Unit," of this chapter.

29. Institutional Award. A grant or cooperative agreement under which funds are awarded based on competition with the intent to maintain a long-term partnership between DOC and the recipient so that new awards may be made on a noncompetitive basis if the recipient performs satisfactorily and submits the appropriate application document, and if the results of the periodic reviews validate the effectiveness and continued desirability of the use of institutional awards for the program.

30. Insular Area. The areas defined by Public Law 95-134, Title V, § 501 (1977), as amended (48 U.S.C. § 1469a), including the Virgin Islands, Guam, American Samoa, and the islands formerly referred to as the "Trust Territory of the Pacific Islands": the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau.

31. Interested Party. Any officer, employee or member of the board of directors or other governing board of a grant recipient, including any other parties that advise, approve, recommend, or otherwise participate in the business decisions of the recipient, such as agents, advisors, consultants, attorneys, accountants or shareholders. This also includes immediate family and other persons directly connected to the Interested Party by law or through a business arrangement.

32. Merit Review. A thorough, consistent, and independent examination of an application based on pre-established criteria by persons knowledgeable in the field of endeavor for which support is requested. A merit review must be conducted by an impartial, objective, unbiased individual with the requisite expertise, knowledge, and experience in a technical field who can evaluate or assess a proposal for its value, quality, and likelihood of success. One who conducts a merit review must not have a conflict of interest, or the appearance of a conflict of interest, regarding any application under his or her review.

33. Multi-Year Award. A financial assistance award which has a project period of more than 12 months of activity, which is partially funded as of the award date, and is subsequently funded in increments. This does not include awards with a project period of more than 12 months which are fully funded as of the award date. See also Chapter 20 of this Manual.

34. New Grant/New Award. The initial funding for an award not previously funded by the operating unit. A new award is the only type of award that will be issued on Form CD-450, "Financial Assistance Award."

35. No-Cost Extension. An amendment that extends the project period and funding period with no additional funding.

36. Noncompetitive Award. An award made with discretionary funds but without the benefit of competition.

37. Nondiscretionary Award Program. A financial assistance program under which a statute specifically names the intended recipient(s) or limits eligibility to all members of a particular class or classes of recipients.

38. Nondiscretionary Funds. Funds for which a statute specifically names the intended recipient or limits the eligibility to all members of a particular class or classes of recipients.

39. Operating Unit. Organizational entities outside the Office of the Secretary charged with carrying out specified substantive functions (i.e., programs) of the DOC, as defined in DOO 1-1. The operating units are the components of the DOC through which most of its substantive functions are carried out. Operating units are delegated authority by the Secretary of Commerce to award financial assistance. This term is synonymous with "funding agency" as used in this Manual.

40. Pre-Award Period. The approved period of time allotted to the award prior to the beginning of the award period as listed on the Form CD-450, "Financial Assistance Award." Generally, the pre-award period will not exceed 90 days prior to the beginning of the award period.

41. Procurement Contract. A legal instrument reflecting a relationship between DOC and a business, organization or individual whenever: (a) the principal purpose of the relationship is the acquisition, by purchase, lease, or barter, of property or services for the direct benefit or use of the Federal Government, or (b) it is determined in a specific instance that it is appropriate to use a type of procurement contract. Such an instrument is governed by the Federal Acquisition Regulation. See also 31 U.S.C. § 6303.

42. Program Officer. The DOC official responsible for the technical, scientific, or other programmatic aspects of an award/program.

43. Project Period. The period established in the award document during which Federal sponsorship begins and ends, as defined in 15 CFR § 14.2(cc). Note: *The term "project period" replaces the term "award period," used in previous versions of this manual.*

44. Real Property. Any land, improved land, structures, long-term leases, easements, appurtenances thereto, or other improvements, excluding movable machinery and equipment. Improved land also includes land which is improved by the construction of such project facilities as roads, sewers, and water lines which are not situated directly on the land but which contribute to the value of such land as a specific part of a project purpose.

45. Recipient. Any individual or entity which receives DOC financial assistance as defined in Paragraph 21 of this chapter, "Financial Assistance." This term is synonymous with the term "grantee" as used in this Manual.

46. Renewal. An amendment that extends the project period and funding period and adds additional funds to the award.

47. Revolving Loan Fund. Established in 1975 to create and retain jobs in distressed communities, the Economic Development Administration's (EDA) Revolving Loan Fund (RLF) provides competitive grants to government and non-profit organizations to start or recapitalize local RLF's. Those RLF's in turn provide gap financing at competitive rates to businesses otherwise unable to access affordable capital. Eligible uses include real estate, equipment, fixed assets, and working capital.

48. Selecting Official. A senior program official of the operating unit who is authorized to make final selection recommendations to the Grants Officer for final approval of award applications.

49. Sub-award. An award of financial assistance made under an award by a recipient to an eligible sub-recipient or by a sub-recipient to a lower sub-recipient (sometimes referred to as a sub-grant). This term does not include the procurement of goods and services by a recipient.

50. Subcontract. A contract under an award by a recipient's or a sub-recipient's contractor.

51. Sub-recipient. Any individual or entity that receives an award from a recipient of a DOC award.

52. Supplemental. An amendment that provides funding over and above the approved budget during the current funding period.

53. Suspension of Award. An action which temporarily suspends Federal sponsorship (as opposed to suspension of payments) under the award pending corrective action by the recipient or a decision to terminate the award. All activities under the award must cease and no costs may be incurred by the recipient during the suspension of award. See also section B.4 of Chapter 11 of this Manual.

54. Suspension of Payment. An action to temporarily withhold payment of funds under the award pending correction of identified deficiencies by the recipient. Activities under the award may continue and the recipient may continue to incur costs during the suspension of payment. See also section B.2 of Chapter 11 of this Manual.

55. System for Award Management. The System for Award Management (SAM) is a Federal Government owned and operated free web site that consolidates the capabilities in CCR/FedReg, ORCA, and EPLS. Future phases of SAM will add the capabilities of other systems used in Federal procurement and awards processes.

56. Termination. Cancellation of Federal sponsorship, in whole or in part, under a grant at any time prior to the date of completion of an award. See also section B.5-6 of Chapter 11 of this Manual.

57. Write-Off. Termination of debt collection activity under the Federal Claims Collection Standards.

B. Acronyms.

AGC/L&R - Assistant General Counsel for Legislation and Regulation, DOC

ASAP - Automated Standardized Application for Payment

BAA - Broad Agency Announcement

CAIVERS - Credit Alert Interactive Voice Response System

CFDA - Catalog of Federal Domestic Assistance

CFO/ASA - Chief Financial Officer and Assistant Secretary for Administration

CFR - Code of Federal Regulations

CRADA - Cooperative Research and Development Agreement

DAO - Department Administrative Order, DOC

DOC - Department of Commerce

DOO - Department Organization Order, DOC

EDA - Economic Development Administration, Operating Unit of DOC

EO - Executive Order, White House

EPLS - Excluded Parties List System

FALD - Federal Assistance Law Division, DOC

FBO - FedBizOpps (Federal Business Opportunities)

FFO - Federal Funding Opportunity

FOIA - Freedom of Information Act

GAO - Government Accountability Office

GSA - General Services Administration

ITA - International Trade Administration, Operating Unit of DOC

MBDA - Minority Business Development Agency, Operating Unit of DOC

MOU - Memorandum of Understanding

NIST - National Institute of Standards and Technology, Operating Unit of DOC

NOAA - National Oceanic and Atmospheric Administration, Operating Unit of DOC

NTIA - National Telecommunications and Information Administration, Operating Unit of DOC

OCA - Office of Congressional Affairs, DOC

OAM - Office of Acquisition Management, DOC

OGC - Office of General Counsel, DOC

OIG - Office of Inspector General, DOC

OLIA - Office of Legislative and Intergovernmental Affairs, DOC

OMB - Office of Management and Budget, White House

PA - Privacy Act

PRA - Paperwork Reduction Act

RFA - Request for Applications

RIN - Regulation Identification Number

SAM - System for Award Management

SPOC - Single Point of Contact

ST&Cs - DOC Financial Assistance Standard Terms and Conditions

TOP - Treasury Offset Program

U.S.C. - United States Code

4. RESPONSIBILITIES IN GRANTS ADMINISTRATION

A. Chief Financial Officer and Assistant Secretary for Administration.

1. Pursuant to DOO 10-5, "Chief Financial Officer and Assistant Secretary for Administration," the DOC CFO/ASA has been designated by the Secretary of Commerce to act as the Grants Officer for the Department and is responsible for developing and implementing policies, standards, and procedures for the administration of all financial assistance programs of the DOC.

[Note: Under DOO 10-4, "Assistant Secretary for Economic Development," EDA has been delegated authority by the Secretary of Commerce to administer the Public Works and Economic Development Act and pertinent provisions of the Trade Act, among other matters. This includes grants administration for such programs. In addition, NIST and NOAA are delegated through DOOs 30-2A, "National Institute of Standards and Technology," and 10-15, "Under Secretary of Commerce for Oceans and Atmosphere and Administrator of the National Oceanic and Atmospheric Administration," respectively, the authority to perform functions in the Federal Grant and Cooperative Agreement Act of 1977 (Public Law 95-224) with regard to making grants and cooperative agreements.]

2. The CFO/ASA hereby delegates the following authorities with respect to awards subject to the provisions of 15 CFR Part 14:

a. The Grants Officer may apply less restrictive requirements when awarding small awards, except for those requirements that are statutory. As defined by 15 CFR Parts 14 and 24, a small award is a grant or cooperative agreement that does not exceed the small purchase threshold, which is currently $150,000.

b. The Grants Officer may approve exceptions on a case-by-case basis, regardless of the amount of Federal funding. The regulation stipulates that an exception made on a case-by-case basis will only apply to a single award.

[Note: This delegation of authority may not be redelegated by the Grants Officer. 15 CFR § 14.4, Deviations, states, "However, in the interest of maximum uniformity, exceptions from the requirements of this part shall be permitted only in unusual circumstances. See Chapter 10, Section A.10, of this Manual for minimum documentary information which must be included in the official award file.]

B. Office of Acquisition Management (OAM).

The Office of Acquisition Management (OAM) is delegated the authority to develop, issue and oversee implementation of policies and procedures for the administration of DOC financial assistance programs (including grants, cooperative agreements, loans, and loan guarantees) and to oversee implementation of DOC's audit follow-up program with respect to financial assistance programs. The OAM Director also serves as the Debarring and Suspending Official for DOC nonprocurement actions, and as the Chair of the DOC Grants Council, which is the governing body for enterprise wide policy development and implementation in the DOC for Federal assistance programs. DOO 10-5 §1.02.f

(revised 1-5-11) states that the CFO/ASA *"assigns responsibility for financial assistance administrative and operational policies to the Director for Acquisition Management*. The Grants Management Division (GMD), located within OAM, is responsible for the administrative and operational policies for financial assistance for DOC.

The following functions will be performed by GMD:

1. Provide guidance, interpretations, and technical assistance on regulations, policies, and procedures for the administration of financial assistance to Grants Officers, Program Offices, and others as needed;

2. Develop, prepare, coordinate, and submit notices of Department-wide proposed rulemaking, interim final rules, final rules, and other *Federal Register* notices on financial assistance matters to the Office of Assistant General Counsel for Legislation and Regulation (AGC/L&R), with copies of comments and/or clearances received during coordination;

3. Provide to OMB and other Federal agencies, after review and comment by appropriate operating unit and other Departmental staff, consolidated DOC comments about proposed new government-wide policies and procedures and proposed revisions to policies and procedures related to financial assistance issues;

4. Notify appropriate operating unit and DOC staff of changes and revisions to government-wide financial assistance policies and procedures or other matters related to financial assistance;

5. Conduct or participate in reviews, task force groups, or other assessments to assure compliance with policies and procedures established for the administration of DOC grant programs;

6. Evaluate, in consultation with other offices as appropriate, status updates provided on implementation of financial assistance audit findings;

7. Develop reports on implementation activities of procurement and financial assistance audit recommendations as necessary for the Secretary's Report to Congress;

8. Serve as the DOC liaison and single point of contact for DOC with OMB, the Government Accountability Office, the Department of the Treasury, Health and Human Services (including Grants.gov), and other agencies on financial assistance matters;

9. Coordinate the collection and submission of the information for DOC financial assistance transactions to the government-wide database, USASpending.gov;

10. Prepare, issue, and maintain this Manual, and interpret its policies, standards, and procedures;

11. Consider requests for waivers to the provisions of this Manual, as permitted by governing statutes and regulations, and notify the Head of the Operating Unit of the decision to approve or deny the request. If a waiver is denied, a written explanation will be provided to the requester;

12. Convene Department-wide Grants Council meetings;

13. Review in a timely manner all materials prepared pursuant to the requirements of this Manual for conformance to financial assistance regulations, policies, standards and procedures. These reviews will cover all financial assistance programs of the Department and will include, but not be limited to, the following documents:

a. Proposed *Federal Register*, when required, and FFO notices related to administration of financial assistance programs, including announcements of funding availability, information collection activities, and program regulations;

b. Application kits/packages that contain any program-specific forms or requirements beyond those listed in section A of Chapter 9 of this Manual;

c. Proposed publications that include financial assistance award management or administration procedures or instructions with respect to individual programs or groups of programs; and

d. Other documents as appropriate.

14. Provide technical assistance to operating units with respect to the posting of FFO announcements, synopses, and application packages to Grants.gov, and when necessary, the downloading of electronic applications from Grants.gov for transmittal to operating units for processing.

15. Coordinate with the appropriate program officers and the Federal Assistance Law Division (FALD) within the Office of the Assistant General Counsel for Finance and Litigation (AGC/F&L) on the establishment of program numbers and updating of text and financial assistance information in the Catalog of Federal Domestic Assistance (CFDA) in accordance with the requirements of OMB Circular A-89 Revised, “Federal Domestic Assistance Program Information.”

C. Office of General Counsel.

Pursuant to DOO 10-6, "Office of the General Counsel," the functions of the OGC include the preparation or examination for legal form and effect of all instruments entered into by the DOC, including grants and cooperative agreements. These agreements create legal rights and obligations between the government and the recipient. Grant and cooperative agreement instruments must be authorized under specific statutory authority, may require the issuance by publication in the *Federal Register* of rules and notices, and are bound by administrative regulations, DOC policies, executive orders (EOs), and OMB Circulars. The award, administration, and audit of these agreements may present legal issues, rights, liabilities, and the possibility of disputes benefits from timely legal advice and guidance.

1. The OGC provides legal support in the following financial assistance related areas:

a. AGC/L&R coordinates and manages compliance with regulatory requirements. This includes coordination, clearance, and submission of items proposed for publication in the *Federal Register* in accordance with the requirements of DOO 10-6, Section 4.01, Subsections a. and g.

b. FALD provides financial assistance related legal representation, advice, and support to Grants Officers and Specialists, Program Officers, OAM, the Nonprocurement Debarring Official, the CFO/ASA, and others. The following functions are performed by FALD:

(1) Legal representation before the Government Accountability Office and administrative tribunals. FALD also provides direct support to the Grants Officer in Federal court litigation regarding the award, administration, and cost disallowance under grants and cooperative agreements;

(2) Legal analysis to Program Officials and Grants Officers of proposed legislation, authorizing statutes and appropriations acts, including implementation by regulation, for assistance programs;

(3) Participation, as appropriate, in compliance reviews, task force groups, or other assessments to ensure compliance with all laws, executive orders, regulations, and policies governing DOC financial assistance;

(4) Legal advice and services to the Debt Workout Groups in accordance with the DOC *Credit and Debt Management Operating Standards and Procedures Manual*, including assistance with final terminations, settlements, compromises of claims, and referrals of claims to the Department of Justice for collection. The General Litigation Division (GLD), within AGCF&L, also provides legal advice and services relative to debt workout, debt collection, bankruptcy, and, where litigation is a possibility, compliance with environmental laws (e.g., the National Environmental Policy Act of 1969 and state analogs, and the Comprehensive Environmental Response, Compensation and Liability Act of 1980). Coordination with GLD is generally obtained by FALD.

[Note: The EDA Chief Counsel's Office and EDA Regional Counsel provide direct supporting legal services with respect to grants and cooperative agreements to EDA program and grants officials. Therefore, references to FALD throughout this Manual generally include EDA counsel with respect to EDA programs. FALD assists, reviews, and provides oversight of EDA counsel's legal advice and guidance on DOC and government-wide requirements.]

2. The following decisions or actions raise significant legal issues, therefore, require FALD clearance:

a. Proposed rules, interim rules, final rules, *Federal Register* notices of availability of funds, when required, Federal Funding Opportunity announcements, RFAs, and all other federal funding announcements relating to financial assistance;

b. Notices of nonprocurement debarment or suspension, determinations, and settlements under 2 CFR Part 1326; and

c. Audit appeal determinations under DAO 213-5, "Audit Resolution and Follow-Up" are submitted to FALD for review and recommendation before clearance by the AGC/F&L.

3. The following actions, determinations, and/or documents, for which decision-making authority rests with the responsible Program Official, Grants Officer, or the Director, OAM, require FALD review and opportunity to comment:

a. Application kits/packages, technical evaluation forms, and conflict of interest forms for reviewers. This includes other documents which establish procedures for awards under a financial assistance program;

b. Packages summarizing the competitive review of discretionary funds in accordance with section C of Chapter 8 of this Manual. These packages should be reviewed by FALD as early as possible prior to approval of awards;

c. Proposed financial assistance competitive awards where the Federal funding is more than the small award amount, defined in 15 C.F.R. § 14.2(hh), $150,000 and all noncompetitive awards, *see also* 41 U.S.C. § 401(11) (the simplified acquisition threshold). This includes all amendments that accumulate to more than $150,000 in total award funding or add or change the scope of work. OGC will consider requests to raise the $150,000 threshold for legal review of competitive awards on a program-by-program basis, with the concurrence of the program office, for on-going programs that have not had significant legal issues or audit problems in the past three years. OGC will also consider requests to change the requirement for legal review of all continuation amendments under multi-year awards, as appropriate. Grants Officers may submit a written request setting forth a justification for raising the threshold to the Chief of FALD, who may provide written approval of such a request when warranted. Contact FALD for further information (202) 482-8035. [Chapter 20 of this Manual provides Guidance on multi-year funding procedures.]

d. Interagency or other special agreements (IAAs) executing the transfer of funds in or out for the award of a grant or cooperative agreement. IAAs can include memoranda of agreement, memoranda of understanding, joint project agreements, interagency purchase orders that document acceptance by all parties, or any other document that details the terms of an agreement and the parties' acceptance. Agreements can transfer funds from one party to the other, bind one or both parties to commit funds or resources to a grant or cooperative agreement, or not involve any resources but describe specific responsibilities under the grant or cooperative agreement. All IAAs require review and approval by the Office of the Assistant General Counsel for Administration, General Law Division (GenLaw). Coordination with GenLaw is generally obtained in coordination with FALD.

e. Nonresponsibility and high risk determinations regarding proposed applicants selected for funding;

f. Notices of suspension or termination of awards;

g. Replacement grantees, assignments, and novations, recipient name changes; and

h. Questions regarding selecting officials' involvement as an independent reviewer.

4. It is in the best interest of the Department that Program Officials and Grants Officers consider all legal ramifications of key decisions related to the award and administration of financial assistance. The decision-making authority rests with the responsible Program Officer, Grants Officer, or OAM. The following are examples of actions/decisions/documents regarding which FALD may, upon request, provide coordinated legal review and comment:

a. Budget certification as to the availability of funds, which shall include representations on the following matters, when appropriate:

(1) time limitation of funds (annual funds vs. no-year funds);

(2) appropriations act; and

(3) any other legislative restrictions on appropriations;

b. Proposed requests for OMB clearance of information collection activities under financial assistance programs;

c. Disputes relating to the terms of the award, particularly on occasions when other parties associated with the award are represented by their own attorneys in discussions or written communications on aspects of the grant;

d. Audit resolution determinations establishing a debt, claim, or other adverse action against a recipient. FALD can also provide services as a mediator, facilitator, or third party negotiator for reaching audit resolution determinations when agreement between Grants Officer, Program Official, and OIG Auditor cannot be reached;

e. Comments prepared by DOC officials on proposed rules, interim rules, and revisions to OMB Circulars applicable to Federal assistance including, but not limited to, the award, administration, and audit of grants and cooperative agreements;

f. Congressional, Freedom of Information Act (FOIA), and executive correspondence relating to financial assistance;

g. Amendments to awards involving significant or unique issues; and

h. When the other parties under the grant are represented by their own attorneys in discussions or written communications on aspects of the grant and in other circumstances when there is a need for legal interpretation or other legal advice and any other issues with legal ramifications.

D. Office of Inspector General.

Pursuant to DOO 23-1, the OIG is assigned the function of carrying out internal, external, financial statement, information and financial system, and special audits affecting the programs and activities of the DOC. The following functions will be performed by OIG:

1. Conduct, supervise, or coordinate Inspector General (IG) audits, inspections, or investigations relating to DOC financial assistance programs and operations;

2. Coordinate notice to the appropriate Grants Officers of negative findings reported on audits conducted in accordance with the provisions of the Single Audit Act of 1996 and OMB Circular A-133.

3. Prepare reports on audit resolution activities as necessary for the IG's Semiannual Report to Congress.

4. Evaluate, in consultation with other offices as appropriate, responses and proposed actions on OIG recommendations.

5. Participate with the Grants Officer in the resolution of audits conducted on financial assistance awards funded by DOC.

6. Review and advise on the adequacy of the financial management systems maintained by applicants and recipients, the projected or claimed costs, and the projected or reported performance.

7. Provide guidance about audit related matters to Grants Officers, Program Officers, their staffs, OAM, and others as needed.

8. Participate as appropriate in reviews, task force groups, or other assessments to assure compliance with policies and procedures established for the administration of DOC grant programs.

9. Recommend policies and procedures to promote economy and efficiency, and to prevent and detect fraud, waste, and abuse in DOC financial assistance programs and operations.

E. Financial, Budgeting, and Accounting Responsibilities.

The following financial and accounting duties must be assigned and fulfilled in connection with financial assistance programs and individual awards:

1. Certify funding availability (this includes assurance that the budgetary line item from which the funds originate is compatible with the financial assistance program under which the funds will be obligated). However, if the funds were transferred from another Federal agency, a copy of the interagency agreement reflecting the statutory authority for the transfer of funds to DOC and the transferring agency's statutory authority to provide financial assistance for this purpose must also be provided.

2. Provide documentation regarding time limitation of funds (e.g., annual funds).

3. Provide citation and, when known, identification of intended recipient for statutory or Congressional direction to fund financial assistance projects identified in the appropriation act or provided in the House, Senate, or Conference Appropriations Committees reports accompanying the appropriation act. If the project is contained in the report language and not in the appropriation act, consult FALD to identify the independent statutory authority to make a grant for this purpose.

4. Notify the Grants or Program Officer, as appropriate, of any other restrictions on appropriations.

5. For updates to the CFDA, bureaus will work closely with their respective budget offices to validate data accuracy and integrity prior to sending the package to OAM's GMD. GMD will review the request and, if found satisfactory, will forward the submission to the Departmental Budget Office for final validation and approval. The Departmental Budget Office will then submit the request in accordance with procedures set forth in the annual guidance provided by the General Services Administration.

6. Provide full accounting support and financial advice to Grants Officers, Program Officers, the operating unit, and others as needed.

7. Provide financial data and reports on grants as requested by other Federal agencies, the operating unit, or the Grants Officer.

8. Record the financial transactions associated with each financial assistance award from inception to close-out of the final financial report, including obligation and deobligation of funds, payments, establishment of accounts receivable, and regularly scheduled billings.

9. As recommended by appropriate grants officials, process requests and documentation for disbursement of funds to be issued by electronic funds transfer or by Treasury check when necessary in accordance with the provisions of the Debt Collection Improvement Act of 1996.

10. Notify the Grants Officer and the Program Officer when accounts receivable become delinquent.

11. Provide a monthly listing of delinquent debtors to the Grants Officer for each DOC operating unit and to OAM.

12. Perform the functions normally assigned to the Finance/Accounting Officer, including those stipulated in the DOC *Credit and Debt Management Operating Standards and Procedures Handbook*.

F. Grants Officer Responsibilities.

The Grants Officer oversees the business management and administrative aspects of grants and cooperative agreements. The Grants Officer shall have sufficient experience, training, and expert knowledge in the area of management of Federal grants and cooperative agreements; analysis and resolution of audits of Federal financial assistance awards; and be fully aware of and capable of requiring compliance with applicable laws, regulations, EOs, and policies to effectively carry out these duties. The Grants Officer or designee will coordinate as appropriate with the Program Officers and other appropriate Departmental offices. Grants Officers shall carry out the responsibilities identified in Paragraphs 1, 2, 3, and 4 of this section without any redelegation to other parties. The duties outlined in Paragraphs 5 through 27 may be further delegated by the Grants Officer to appropriate members of the Grants Officer's staff. Although these actions may be delegated to appropriate members of the Grants Officer's staff, these duties ultimately remain the responsibilities of the Grants Officer.

[NOTE: The Grants Officer should know what functions are inherently governmental and critical. Contractors and grantees cannot perform inherently governmental and critical functions. Contractors and grantees are prohibited from making determinations, approving and directing functions that should be done by Federal officials (e.g. acquisition planning, determining minimum needs of the Federal government, deriving cost estimates, voting on evaluation panels or selecting awardees are also inherently federal functions). Additionally, a contractor cannot make final decisions, including determining award fees, terminations for convenience or cause, or order any changes under a contract. Contractors may provide support to Federal government decision makers in each of these areas but cannot make the actual determinations. For a list of inherently governmental functions, read the OMB Office of Federal Procurement Policy Publication of the Office of Federal Procurement Policy (OFPP)

Policy Letter 11–01, "Performance of Inherently Governmental and Critical Functions," available at http://www.gpo.gov/fdsys/pkg/FR-2011-09-12/pdf/2011-23165.pdf.]

Grants administration responsibilities are as follows:

1. Approve awards and amendments that obligate or deobligate funds.

2. Suspend or terminate individual awards, excluding debarment or suspension of a recipient as provided under 2 CFR Part 1326.

3. Make determinations of non-responsibility and designations of high-risk recipients.

4. Approve, as appropriate, less restrictive requirements and exceptions pursuant to the delegation of authority from the CFO/ASA in accordance with Section A.2 of this chapter.

5. Provide grants administration guidance and support to Program Officers, recipients, and others as needed.

6. Maintain the official award files (electronic and/or hard copy) in accordance with section A of Chapter 10 of this Manual.

7. Ensure that each financial assistance award is prepared and administered in accordance with applicable statutes, regulations, OMB guidance, EOs, and DOC policies.

8. Perform cost analysis of a proposed budget to assure that costs in the award budget are reasonable, allowable, and allocable in accordance with the applicable cost principles.

9. Ensure that pre-award administrative procedures are carried out, including but not limited to the following:

   a. Provide assurance that the recipient was competitively selected by the appropriate independent or technical review process or that appropriate noncompetitive selection procedures were followed in accordance with Chapter 8 of this Manual and that the official award file contains the required documentation with respect to selection procedures;

   b. Review of any justification for noncompetitive award of discretionary funds and make determination of adequacy of that justification and the basis for the justification; review of credit reports when negative findings are reported;

   c. Provide written verification concerning an outstanding delinquent receivable or debt;

   d. If applicable, review of any available A-133 or other audit report;

e. Review of the General Services Administration's (GSA's) "Excluded Parties List System" to determine whether the applicant (key personnel as well as the institution) has been debarred, suspended, or otherwise excluded from receiving financial assistance;

f. Provide assurance that the applicant has submitted a completed form CD-511, "Certification Regarding Lobbying;"

g. Select the appropriate funding instrument to be used in a particular transaction, i.e., grant, cooperative agreement, or contract and development of appropriate special award conditions defining the role of the Federal Government when the level of involvement is determined to be substantial and award of a cooperative agreement is warranted;

h. Include "Department of Commerce Financial Assistance Standard Terms and Conditions" (DOC ST&Cs) in awards, as applicable, as well as any operating unit-specific standard and/or special award conditions required to protect the Federal Government's interest.

i. Examine proposed pre-award costs to determine necessity and applicability to project objectives and approval or disapproval of the pre-award costs, as appropriate; and

j. Collect all necessary internal clearances (such as OIG, OGC, etc.) for inclusion in the official file.

10. Ensure recipient's compliance with award conditions and take appropriate action in accordance with Chapter 11 of this Manual when there is non-compliance.

11. Review, as necessary, subcontracts and subgrants by the recipient to determine compliance with applicable administrative requirements, requests for foreign travel, and requests for extension of reporting periods.

12. Receive and review financial reports submitted by the recipient to ensure that:

a. Recipients are expending funds at an appropriate rate and that matching requirements are being met;

b. Federal disbursements are comparable with the period covered by requests for payment;

c. Recipients are not maintaining excess cash on hand.

d. Reports submitted by the recipient agree with DOC accounting records of disbursements;

e. Reports contain information on indirect costs and program income if these items are included in the approved budget; and

f. Reports are completed correctly.

13. Review and approve requests for advance or reimbursement or contact recipient if payment cannot be made as requested.

14. Provide proper notice to any recipient in advance of suspending payments, including information on how to remedy the suspending of payments and the assurance that payments will be resumed once the recipient has met requirements.

15. Review recommendations for no-cost amendments (which include, but are not limited to, budget revisions, time extensions to the award period, or changes in the work schedule or key personnel) and approve or notify the Program Office and/or recipient of reason for disapproval.

16. Manage disposition of Federally-owned property by ensuring that the appropriate Property Management Officer is notified of the existence, nature, value, and location of grants property available for disposition, as appropriate.

17. Ensure that the award is administratively closed-out and, as applicable, that the official award file is held in the appropriate records holding facility for the appropriate time period before the file is destroyed.

18. Review the audit report, the recipient's response, and the Program Officer's comments and prepare the audit resolution proposal in accordance with DAO 213-5.

19. Notify recipient of any account receivable which is being established and provide required information about how to make payment as well as consequences of nonpayment.

20. Review and process appeals of financial assistance audit resolution determinations in accordance with the provisions of DAO 213-5.

21. Monitor open financial assistance audit recommendations; ensure that open recommendations are properly implemented or, where appropriate, that a delinquent debt is referred to the Debt Workout Group; and ensure that updated status reports for the Secretary's Semiannual Report to Congress on Inspector General audits are properly submitted in a timely manner to OAM.

22. Review in a timely manner the following documents for conformance to government-wide and DOC financial assistance administrative requirements:

a. Proposed *Federal Register* notices, as required, and Federal Funding Opportunity announcements;

b. Application kits/packages;

c. Publications (including information on the DOC, operating unit, or program Internet website) that include information on financial assistance award management or administration;

d. Proposed requests for OMB clearance of information collection activities under financial assistance programs; and

e. Other documents as appropriate.

23. Ensure that the quarterly financial assistance transactions are reported accurately and in a timely manner to USASpending.gov and all other government reporting systems, as appropriate.

24. Refer proposed nonprocurement suspension and debarment actions to the Department's Debarring and Suspending Official in accordance with provisions contained in 2 CFR Part 1326.

25. Assure that any FOIA requests for documents in an official award file are reviewed and released or withheld in accordance with the provisions of the FOIA. If the Grants Officer is not authorized by agency regulations to withhold documents under the FOIA, the Grants Officer must provide responsive documents to the appropriate initial denial authority.

26. Notify the recipient when the award is close to completion and provide guidance for close-out of the award.

G. Liaison Responsibilities.

Each operating unit that provides funding for financial assistance awards shall establish a central liaison to interact with OAM. Each liaison is responsible for performing the following primary duties with respect to financial assistance.

1. Policy Implementation.

a. Establish procedures which support the requirements of this Manual and ensure conformance with the provisions of this Manual;

b. Review relevant draft regulations;

c. Ensure each program's compliance with Federal, Departmental, and operating unit grants administration requirements;

d. Implement the policy requirements as set forth in this Manual.

2. Monitoring.

a. Review the operating unit's grants administration system for compliance with this Manual; and

b. Review grant forms and other grant documents for compliance with applicable requirements.

3. Liaison and Coordination.

a. Answer questions and inquiries on grant-related matters.

b. Coordinate, as appropriate, the operating unit's consolidated funding and other grant-related activities.

c. Assure appropriate coordination of proposed publications for the *Federal Register*, as required, through OAM, OGC, and other required DOC offices.

d. Disseminate information from OAM to appropriate operating unit personnel and offices.

4. Information Collection, Analysis, and Dissemination. Coordinate preparation and submission of reports on grant-related matters for DOC.

H. Programmatic Responsibilities.

The Program Officer, or assigned operating unit component, is responsible for monitoring and oversight of the work being conducted under an award, such as tracking the recipient's progress and comparing the actual accomplishments with the goals and objectives established in the award. The Program Officer shall have sufficient experience, training, and expert knowledge in the specific program area and in program management in general, including knowledge of applicable laws, regulations, and Departmental policies as well as program-specific goals, priorities and policies, to effectively manage the program area and to advise the Grants Officer on all programmatic aspects of the awards. The following are programmatic functions to be performed by the operating unit:

1. Provide programmatic guidance and technical assistance to recipients, Grants Officers, and other officials, as necessary.

2. Establish programmatic policy within the scope of authorizing legislation and Departmental goals and objectives.

3. Develop evaluation criteria and weights or relative values used for competitively selecting applications.

4. Prepare *Federal Register* notices, as required, in accordance with Chapter 19 of this Manual, announcing the availability of funds, and other grant-related documents (e.g., information collection, etc.) for publication in the *Federal Register.*

5. Prepare FFO announcements for posting on Grants.gov in accordance with Chapter 19 of this Manual. OAM will provide technical assistance to operating units with respect to the posting of announcements, synopses, and application packages to Grants.gov.

6. Prepare, in consultation with the Grants Officer, the application package for the program, including any requests for OMB clearance of information collection activities that may be required by the program or by individual financial assistance awards under the program.

7. Develop and coordinate the competitive review process in accordance with Chapter 8 of this Manual, select qualified reviewers who have no conflicts of interest, ensure that each application receives the appropriate (independent or technical) and objective review, and verify that the ranking or selection of applications is based on the published selection criteria.

8. Develop and provide to the Grants Officer written justification for proposed noncompetitive awards of discretionary funds and provide basis for justification.

9. Receive and review applications and proposals. Also review justifications for compliance with existing program guidelines, regulations, and legislation, as well as proposed budgets to determine the reasonableness, necessity, and adequacy of proposed costs for accomplishing the objectives of the proposed award.

10. Establish criteria for evaluating project performance.

11. Provide to Grants Officer, for the official award file, a complete and accurate funding recommendation package in accordance with instructions contained in section B of Chapter 9 of this Manual. This includes the packages summarizing the results of the competitive review process described in section C of Chapter 8 of this Manual.

12. Provide or make available to the Grants Officer for the official award files: internal memoranda and all correspondence (scanned or original signatures required when available) regarding specific award files, recipient performance reports, written evaluations of performance reports and of any on-site visits, and commercial credit reports, if applicable.

13. Notify unsuccessful applicants of decision not to fund an application in accordance with Chapter 8 of this Manual.

14. Monitor project activities to ensure that goals are being achieved and the project is being carried out properly.

15. Provide written background and recommendations to the Grants Officer on programmatic issues, such as amendments to the project description or budget.

16. Review financial and performance or technical reports for consistency with approved project. Notify the Grants Officer if the recipient is not in compliance with the terms of the award.

17. Evaluate all performance, property, and patent reports submitted by the recipient and provide a copy, as applicable, within 30 days to the Grants Officer.

18. Report to Grants Officer, within 30 days, on potential or existing problems, financial inconsistencies, or situations of noncompliance and provide recommendation for remedy.

19. Monitor the recipient's purchase and use of property purchased with award funds or furnished by the Federal Government under the grant, and assist the Grants Officer to ensure compliance with the relevant provisions of 15 CFR Part 24.31, 15 CFR Part 14.32, the DOC *Personal Property Management Manual*, the DOC *Real Property Management Manual*, and any other applicable legal requirements.

20. Review, analyze, and comment on audit reports provided by the Grants Officer for review and comment, the recipient's response to audit reports, and audit determination appeals.

21. Assure that any FOIA requests for documents in the Program Office files are reviewed and released or withheld in accordance with the provisions of the FOIA.

22. Ensure compliance with all relevant programmatic statutes, regulations, EOs, and policies (e.g. civil rights and environmental issues). These factors should be considered at an early stage in the application or proposal review process. This includes encouraging applicants to build environmental considerations into their own planning processes in a way that facilitates National Environmental Policy Act and other environmental compliance requirements. The funding agency is ultimately responsible for environmental compliance and has a duty to enforce recipient compliance as a condition of funding.

23. Recommend to the Grants Officer suspension or termination of the award, when appropriate.

24. Provide one copy each to the Grants Officer and to the Budget Officer of any agreement effecting a transfer of funds from other Federal agencies or from another DOC operating unit for award(s) and identify to the Grants Officer any restrictions placed on funds that are transferred from other Federal agencies for inclusion in a DOC grant or cooperative agreement.

[Note: A transfer of funds cannot be used for financial assistance unless there is statutory authority allowing the transfer. In addition, both the DOC operating unit and the other agency must possess the requisite grant-making and mission-related authorities to carry out the work under the award. See also section W. of Chapter 16 of this Manual.]

25. Arrange for an independent review to be conducted of institutional grant program and/or awards in accordance with section J.2 of Chapter 16 of this Manual.

26. Assure that the program is in compliance with provisions of EO 12372, "Intergovernmental Review of Federal Programs," and coordinate, as appropriate, with the Office of Legislative and Intergovernmental Affairs (OLIA) to determine if the program is covered by EO 12372.

[NOTE: The Program Officer should know what functions are inherently governmental and critical. Contractors and grantees cannot perform inherently governmental and critical functions. Contractors and grantees are prohibited from making determinations, approving and directing functions that should be done by Federal officials (e.g. acquisition planning, determining minimum needs of the Federal government, deriving costs estimates, voting on evaluation panels or selecting awardees are also inherently federal functions). Additionally, a contractor cannot make final decisions, including determining award fees, terminations for convenience or cause, or order any changes under a contract. Contractors may provide support to Federal government decision makers in each of these areas but cannot make the actual determinations. For a list of inherently governmental functions, read the OMB Office of Federal Procurement Policy Publication of the Office of Federal Procurement Policy (OFPP) Policy Letter 11–01, "Performance of Inherently Governmental and Critical Functions," available at http://www.gpo.gov/fdsys/pkg/FR-2011-09-12/pdf/2011-23165.pdf.]

I. Property Management Responsibilities.

1. Ensure uniform implementation of operating unit policies and procedures pertaining to the administration of property purchased by the recipient with funds under the award or furnished by the Federal Government under an award;

2. If requested by the Grants Officer, provide guidance to recipients in establishing and maintaining property accountability systems, and in the use and control of property acquired under the provisions of an award;

3. If requested by the Grants Officer, establish and maintain property accountability records, provide property disposition instructions to recipients, and provide a copy of the instructions to the Grants Officer; and

4. Provide support and assistance to the Grants and Program Officers, as needed, regarding any and all property matters, including real property funded or partially funded with Federal funds through a financial assistance award.

5. RELATIONSHIPS WITH OUTSIDE ENTITIES

A. Overview.

1. The DOC has a diverse mission which is accomplished via both in-house activities and non-Federal organizations, using instruments reflecting either a financial assistance, procurement, or other agreement. These instruments are different in purpose and create different relationships between the Department and outside parties.

2. The Federal Grant and Cooperative Agreement Act of 1977, as amended, 31 U.S.C. §§ 6301-6308, ("the Act") requires executive agencies to distinguish procurement relationships from assistance relationships with non-Federal parties and provides some general guidance on helping make these distinctions. The Act requires the use of procurement contracts for all agency acquisition activity, and the use of assistance instruments (grants and cooperative agreements) for specified types of assistance relationships.

3. This chapter summarizes and augments the guidance in the Act on distinguishing between those situations in which a procurement contract, an assistance instrument (grant or cooperative agreements), or other type of agreement is the appropriate instrument.

B. Grants.

A grant is the legal instrument reflecting a relationship between DOC and a recipient whenever: (a) the principal purpose of the relationship is to transfer money, property, services, or anything of value in order to accomplish a public purpose of support or stimulation authorized by Federal statute, and (b) no substantial involvement is anticipated between DOC and the recipient during the performance of the contemplated activity. The term "grant," as used in this manual, refers to both a grant(s) and cooperative agreement(s), unless specifically stated otherwise. See 31 U.S.C. § 6304.

C. Cooperative Agreements.

A cooperative agreement is the legal instrument reflecting a relationship between DOC and a recipient whenever: (1) the principal purpose of the relationship is to transfer money, property, services, or anything of value to accomplish a public purpose of support or stimulation authorized by Federal statute, and (2) substantial involvement (e.g., collaboration, participation, or intervention by DOC in the management of the project) is anticipated between DOC and the recipient during performance of the contemplated activity. See 31 U.S.C. § 6305. Cooperative agreements are subject to the same laws, OMB, Treasury, and other Federal directives as grants. The following information may be helpful in deciding whether there is substantial involvement in the scope of work of a proposed award.

1. Sections C. and G. of the OMB Guidelines, *Implementation of Federal Grant and Cooperative Agreement Act of 1977* (43 FR 36860 issued August 18, 1978), describe the characteristics of the factors each Grants Officer should consider in deciding whether there will be substantial involvement of the organization unit in the performance of activities under the assistance instrument.

2. Listed below are examples of involvement which may be substantial, depending upon the circumstances, and examples of situations which would not be considered substantial. The examples are not meant to be a checklist nor does the presence of a single factor necessarily constitute substantial involvement. Rather, they illustrate concepts that, in varying degrees or combinations, could suggest the use of either a grant or a cooperative agreement. For more detailed examples, see the OMB guidelines.

a. The following are examples of requirements that would demonstrate substantial involvement if they were included in the terms and conditions of a financial assistance award:

(1) Authority to halt immediately an activity if detailed performance specifications (e.g., construction specifications) are not met.

(2) Stipulation that the recipient must meet or adhere to specific procedural requirements before subsequent stages of a project may continue.

(3) Approval by an appropriate DOC official of substantive provisions of proposed subawards.

(4) Involvement in the selection of key recipient personnel.

(5) Requirement that the appropriate DOC official (1) collaborate with the recipient by working jointly with a recipient scientist or technician, in carrying out the scope of work, (2) train recipient personnel, or (3) detail Federal personnel to work on the project effort.

(6) Specify direction or redirection of the scope of work due to inter-relationships with other projects, such as requiring recipients to achieve a specific level of cooperation with other projects.

(7) DOC operational involvement during the project to ensure compliance with such statutory requirements as civil rights and environmental protection.

(8) Limitation on recipient discretion with respect to scope of work, organizational structure, staffing, mode of operations and other management processes, coupled with close monitoring of operational involvement during performance.

b. The following are examples of circumstances that would demonstrate non-substantial involvement:

(1) Award follows normal procedures as set forth in 15 CFR Part 14 or 15 CFR Part 24 concerning Federal review of recipient's procurement standards and sole source procurements.

(2) The DOC program and grants administration offices become involved in the project solely to correct deficiencies in project or financial performance.

(3) DOC performs a pre-award survey and requires corrective action to enable the recipient to account for Federal funds.

D. Procurement Contracts.

A legal instrument reflecting a relationship between DOC and a business, organization or individual whenever: (a) the principal purpose of the relationship is the acquisition, by purchase, lease, or barter, of property or services for the direct benefit or use of the Federal Government, or (b) it is determined in a specific instance that it is appropriate to use a type of procurement contract. Such a contract is governed by the Federal Acquisition Regulation. See 31 U.S.C. § 6303.

E. Other Types of Agreements.

There are transactions and agreements other than grants, cooperative agreements, and procurement contracts under which DOC can enter into a relationship with outside entities. The Grants Officer, OGC (FALD, Contract Law, and GenLaw), Program Counsel, and OAM can offer advice and assistance with respect to the appropriate instrument to be used in a specific set of circumstances. Some of these agreements are referred to as Memoranda of Understanding (MOUs). Programs should not engage in MOU discussions or enter into MOUs if financial assistance is anticipated for an activity or program; instead, a competition should be planned. The MOU format is not appropriate as a substitute for procurement contracts or financial assistance awards and is not to be used as a sole source justification for award of procurement contracts or financial assistance. The cognizant Grants Officer and OGC (FALD and GenLaw), and OAM should be contacted in situations involving an agreement pursuant to the Economy Act (31 U.S.C. § 1535) or other funds transfer authority that results in the award of financial assistance. In addition, questions about specific types of agreements may be referred to the contact offices listed. Additional guidance on other types of agreements may be found in the "*Department of Commerce Interim Interagency and other Special Agreements Handbook* (April 2004). Examples of other types of agreements include, but are not limited to, the following:

1. Cooperative Research and Development Agreement (CRADA). The Technology Transfer Act of 1986 (15 U.S.C. § 3710a) authorizes legal instruments that provide for cooperative research, licensing of patents obtained under a CRADA, and the transfer of technology from DOC to another party or from another party to DOC. However, CRADA does not authorize the contribution of financial assistance funding to a non-Federal party. The Office of the Chief Counsel for Technology should be consulted to determine if a CRADA is the appropriate instrument in a given situation.

2. Economy Act Agreement. The Economy Act, 31 U.S.C. § 1535, authorizes agencies to place orders with other Federal agencies for goods or services and to pay the actual or estimated costs of the goods or services, when certain conditions are met. The OGC General Law Division provides legal advice on agreements pursuant to the Economy Act. For Economy Act transactions which may involve the transfer of funds for the subsequent award of financial assistance funds, the cognizant Grants Officer and OGC (FALD and GenLaw) should be contacted prior to approval of the agreement.

[Note: There are instances when DOC operating units receive and/or transfer funds under an Economy Act transaction from or to other Federal agencies to make awards of financial assistance. Agencies may also have specific statutory authority to receive or transfer funds for particular programs. In those circumstances, both the DOC operating unit and the other agency must possess the requisite grant-making and mission-related authorities to carry out the work under the award. In addition, established financial assistance procedures must be followed in making any award. An MOU may also be used to memorialize a relationship where there is no direct exchange of funds between the parties. Activities under the MOU, however, may be carried out through the award of financial assistance when established procedures (including competition) for financial assistance awards are followed.]

3. Joint Project Agreement. DOC's Joint Project Authority is set forth in 15 U.S.C. § 1525 in the second paragraph. This authority permits DOC to engage on an equitable basis in joint projects on matters of mutual interest with non-profit, research, or public organizations such as state and local governments under certain conditions. The OGC General Law Division must be consulted for advice and clearance concerning joint project agreements.

4. Fellowship. Fellowships in the federal assistance context are made to pursue studies, research, and/or professional development (often of an academic nature) authorized by statute. Fellowship programs are most often conducted under DOC grants or cooperative agreements made to institutions of higher education or non-profit organizations. Fellowships made directly to students are not always made under grants or cooperative agreements in DOC. The cognizant Grants Officer should be contacted with respect to fellowship programs that are funded with grants and cooperative agreements

6. TYPES OF FINANCIAL ASSISTANCE FUNDS AND AWARDS

Federal funding for grants and cooperative agreements may be classified on the basis of the amount of discretion that DOC has in making funding decisions. The two broad classifications for types of funds are "discretionary funds" and “nondiscretionary funds."

A. Discretionary Funds.

Discretionary funds are those funds for which DOC can exercise its judgment in selecting to whom the funds are awarded. It is the policy of DOC that discretionary funds are provided only after maximum practicable competition among eligible entities. However, there are instances where awards are recommended for funding without full and open competition. The three types of awards made with discretionary funds are discussed below.

1. Competitive Awards. These awards are made after a Federal Funding Opportunity (FFO) has been posted at Grants.gov, and DOC has chosen a proposal based on merit review and the application of established evaluation and selection criteria. The DOC may also treat as competitive an award that was solicited and reviewed through another federal agency’s competitive process or through a competitive solicitation process developed by several federal agencies acting in partnership. See Chapter 19 of this Manual for instructions in preparing *Federal Register* notices, as required, and FFOs announcing the availability of financial assistance funds. Program officials are encouraged to further publicize notices through Internet announcements, mailing lists, presentations at conferences, professional journals, trade association newsletters, and other media that are available and accessible to potential applicants.

2. Institutional Awards.

a. These awards are made with the intent to maintain a long-term partnership between DOC and the recipient for those projects established under long term planning goals and objectives common to the research and programmatic needs of both parties.

(1) Renewals may be made on a noncompetitive basis if the recipient performs satisfactorily. While this type of award is intended to accommodate a long-term relationship between DOC and recipients, the individual awards should not exceed a five-year period.

(2) The initial request for applications shall be the same as that for competitive awards.

(3) If a recipient of an institutional award is performing in an unsatisfactory manner, that recipient should generally be replaced by an applicant that is selected through full and open competition.

(4) Programs that make institutional awards must conduct periodic reviews in accordance with the provisions of section K.2 of Chapter 16 of this Manual.

b. The Grants Officer is responsible for determining whether a program is designated as an institutional award program and may determine that only one or more awards under a program are institutional awards. Institutional awards should only be established between an operating unit and

a recipient for long-term projects that are common to the programmatic goals and objectives of DOC and the recipient.

c. Institutional awards are not the same as multiyear awards. Other projects of long-term duration may be funded using DOC Multi-Year Funding procedures prescribed in Chapter 20 of this Manual.

3. Noncompetitive Awards.

a. These awards are made without the benefit of competition. In those instances when noncompetitive awards are recommended for funding, complete and detailed justifications must be submitted by the Program Officer to the Grants Officer for review and approval. Noncompetitive awards using discretionary funds for a new award are allowed in only the following situations:

(1) Future awards under institutional grant programs where the recipient should have been initially selected based on competition. The Program Office must provide to the Grants Officer summary information about the original competition, or waiver of competition, and the date and results of the latest periodic review.

(2) In instances where an applicant submits an application on its own initiative (not as a result of a request by the funding agency), the application does not fall within the scope of a published competitive notice, and the agency determines in accordance with Chapter 8, Section F., of this Manual, that the application has merit and falls within one of the six listed categories.

b. Unless otherwise covered by a Broad Agency Announcement (BAA), if more than five percent (5%) of the total number of awards made under a program within one fiscal year are made on the basis of recipient initiative, the Program Officer and the Grants Officer should examine the current *Federal Register* notice and FFO, if they exist, and make any corrections deemed necessary to future notices so that the solicitation better reflects the goals or needs of the program.

B. Nondiscretionary Funds.

Nondiscretionary funds are those funds for which DOC cannot exercise its judgment in selecting to whom the funds are awarded. Nondiscretionary funds are also referred to as “Congressionally-Mandated” or “hard earmarks”. The statutory authority is the basis for making awards with nondiscretionary funds. The two types of awards made with nondiscretionary funds are listed below.

1. Awards Mandated by Statute. These mandatory awards are made to organizations which are specifically named (not just generally described as to type of organization) in a statute and for which funds may be set aside in an appropriations act. The recipient is entitled to the award and has an enforceable right to receive financial assistance. These awards are also referred to as “hard earmarks”. This category does not include projects that are only contained in legislative history, which are referred to as “Congressional direction” or “soft earmarks”.

2. Awards Limited by Statute. These awards are made to organizations for which eligibility has been limited by law to a particular class of applicants, every one of which has been notified of the availability of funding, and every applicant that applies and that meets statutory requirements is assured an award (e.g., there may be special language in an appropriations act directing an agency to make

awards to every state that applies for funding and meets certain criteria). Included in this category are NOAA programs which are listed in the *Federal Register* notice, "Guidelines for Nondiscretionary Financial Assistance," (59 FR 21959 published April 28, 1994). Depending upon the program and its legislation, there may be competition among the eligible applicants for additional funding as an incentive for receiving proposals for innovative or pilot/demonstration projects.

[Note: Some programs in DOC are authorized to make awards with both discretionary and nondiscretionary funds under different sections of their authorizing statues.]

7. TYPES OF APPLICATIONS

Applications for DOC grants and cooperative agreements may be classified into four major categories, which are discussed below. Review, selection, approval, and notification procedures for all applications shall be as prescribed in Chapter 8 of this Manual.

A. Pre-applications.

Program Offices may request pre-applications for one or more of the following reasons: to establish productive communications between the Program Office and applicants; to determine an applicant's eligibility; and/or to determine how well a proposed project is likely to compete with other similar projects. One of the advantages of pre-applications is to assist potential applicants by giving them realistic feedback on whether their project ideas/proposals have potential for Federal funding and to discourage applications that have little or no chance of funding. Such pre-application review is intended to allow applicants to avoid incurring significant expenditures in preparing applications that are not consistent with the operating unit's program goals and objectives. This pre-application is sometimes referred to as a letter of intent.

1. Pre-application Assessment. Under this type of pre-application process, regardless of any feedback that a potential applicant may receive in response to a pre-application, the applicant still has a right to submit a complete new application under the program. Pre-applications are usually reviewed by program staff who may obtain assistance from other reviewers as deemed necessary. The review is intended to form the basis for providing feedback or allowable technical assistance to applicants. This is not a process to provide assistance in the development of an application.

2. Pre-application Competition. A second type of pre-application process is one where projects are eliminated. It can be used if, and only if, the criteria used in the determination to reject projects and prevent an applicant from submitting a full application is expressly set forth in the federal funding announcement.

B. Competitive Applications.

Competitive applications are those that have been received as a result of the appropriate solicitation of proposals and that will be reviewed based on published evaluation and selection criteria. These applications may be for new awards or for amendments.

1. New Competitive Awards.

   a. Competitive applications are submitted pursuant to a competitive federal funding announcement published by a DOC operating unit. These federal funding announcements must be accomplished through FFOs posted at Grants.gov, as required in section A of Chapter 19 of this Manual. Widespread publicizing is strongly encouraged and is recommended (e.g., Internet, mailing lists, conferences, professional journals, and trade association newsletters).

   b. All applications must be treated fairly and equitably under the review process.

2. Amendments for Renewals. For all practical purposes, competitive renewals are treated the same as a new competitive award. This type of application may be accepted unless prohibited by the

program's legislation, regulations, or other published policy. Applications for competitive renewal funding must compete with new applications and must be submitted in accordance with any established deadline dates and will be subjected to the same review requirements as competitive applications for new awards. If the application is approved for funding, the Grants Officer shall fund the extended period of support as a new funding period and an extension of the original award period.

C. Noncompetitive Applications.

Noncompetitive applications are those that have been received without benefit of full and open competition. Unsolicited noncompetitive applications for new awards of discretionary funds that fall within the scope of a competitive announcement will not be funded outside the competitive process and should be held for the next competition or promptly returned to the applicant with appropriate explanation. Noncompetitive applications may be used for new awards or for amendments.

1. New Noncompetitive Awards. Noncompetitive applications for discretionary funds are to be approved only in unusual and extraordinary circumstances and only after the Program Officer and the Grants Officer determine that (a) a noncompetitive award of discretionary funds is warranted by the facts; (b) that the application is consistent with DOC missions and plans; (c) and that the official grant file contains appropriate justification documentation as required in Chapter 8 of this Manual.

2. New Awards Mandated or Limited by Statute. These applications may be submitted and approved for funding when they are for statutorily authorized awards or for statutorily limited awards. These awards are required by Congress in a public law and are made with nondiscretionary funds.

3. Amendments for Renewals. If the application is approved for funding, the Grants Officer shall fund the extended period of support as a new funding period and an extension of the original award period. Appropriate uses of this type of amendment include renewals of nondiscretionary awards; and renewals of awards which are funded annually based on an FFO posted at Grants.gov that stated awards would be selected for a period of more than one year but funded and extended annually, contingent upon availability of funds, satisfactory performance, and at the discretion of DOC. Noncompetitive awards of discretionary funds should not normally be given a renewal without competition. A renewal lengthens the award period and funding period while adding additional funds to the award.

4. Amendments for Continuations. A continuation amendment is made without competition and provides continued funding within an approved award period. A continuation extends the funding period and provides additional funding for an award period that has been previously approved, such as when multi-year funding was approved at the time of award approval. Chapter 20 of this Manual provides procedures for funding multi-year awards when full funding of the award period is not available.

5. Extension Amendments at No Additional Cost to the Government (No-cost Extensions). Unless restricted by statute, regulations, or the terms and conditions of an award, a recipient may apply for a noncompetitive extension of the final funding period for up to 12 months beyond the ending date of the funding period as shown on the Financial Assistance Award notice. If recommended by the Program Office and approved by the Grants Officer, such an extension is made without additional funds.

D. Supplemental Applications.

Supplemental applications are for funding over and above the approved budget during the current funding period with no change to the project period or the funding period. These applications should be submitted and approved prior to the expiration date of the award. Funding for these types of amendments is at the sole discretion of the operating unit with final approval of the Grants Officer. In addition, supplemental funding is subject to funding constraints or limitations of the operating unit. Supplemental applications should fully explain why it is necessary to provide additional Federal funding to supplement the last approved budget. Appropriate handling of the competitive nature of supplemental funding should be considered on a case-by-case basis. These applications may only be for amendments that clearly are within the approved scope of work. Supplemental applications shall not be funded merely to avoid competition.

1. Amendments for Administrative Increases to Meet Institution-wide Increased Costs. Applications for supplemental funding may be submitted to an operating unit to cover organization-wide increased costs, such as those costs associated with salary or fringe benefit increases that were not foreseen at the time of the original application. The anticipated cost increases must take effect during the current funding period to be eligible for supplemental funding. These applications are generally not competed when the increased costs are within 25 percent of the last approved budget. If the increased costs are more than 25 percent, the application should be treated in the same manner as an application for new competitive awards, as described in Paragraph B.1 of this chapter.

2. Amendments for Expansion of a Project or Cost Overrun. Applications for supplemental expansion of a current project's previously approved scope of work or to absorb a cost overrun are generally treated in the same manner as an application for new competitive awards as described in Paragraph B.1 of this chapter. If this type of amendment is recommended by the Program Officer and approved by the Grants Officer without competition, the official award file must contain appropriate justification documentation to explain and justify the decision not to require competition.

8. MERIT REVIEW, SELECTION, APPROVAL, AND NOTIFICATION PROCEDURES

A. Overview.

It is the policy of DOC to seek full and open competition for award of discretionary funds. Moreover, DOC financial assistance must be awarded through a merit-based review and selection process whenever possible. This Chapter prescribes the standards and procedures to be used by operating unit officials and grants officers for reviewing, selecting, approving, and notifying applicants of funding decisions.

B. Review Standards.

1. Applications. All applications for financial assistance should receive a fair, equitable, and objective review.

a. The following are minimum general requirements that must be met in order for any application to be processed for funding under DOC financial assistance programs:

(1) Legislative authority to perform the work with financial assistance;

(2) Funding availability;

(3) Complete application package; and

(4) Scope of work that is consistent with DOC's mission.

b. Applications should undergo an initial screening for conformance with the minimum general requirements and any mandatory technical and administrative requirements stated in the program's regulations and FFO. The Program Office must document and maintain a record of reason(s) if any application is determined to be incomplete.

c. Applications that meet the requirements of the initial screening are then subject to the objective merit review as provided in B.4., below.

2. Nondiscretionary Funds. All awards made with nondiscretionary funds shall be subject to an objective merit review by at least one reviewer who is professionally and technically qualified to conduct the review. This review is limited to technical and/or cost matters.

3. Discretionary Funds. Except as provided below, all awards made with discretionary funds shall be subject to an objective merit review by a group of at least three professionally and technically qualified reviewers. This review is limited to technical and/or cost matters and is separate from any programmatic review of program and policy factors, which may be considered in making a selection or non-selection decision.

4. Merit Reviews of Competitive and Noncompetitive Awards.

a. Merit Review of Competitive Awards:

(1) An objective merit review of financial assistance applications is advisory and does not replace the authority of the program official responsible for deciding whether to recommend funding for an award.

(2) The merit review criteria for new competitive awards and competitive amendments for renewal must be in accordance with evaluation criteria set forth in the applicable program regulations and FFO. The merit review procedures must set forth the relationship between the reviewing individuals, or the review committees or groups, and the official who has the final decision-making authority. In defining this relationship, the program must set out, at a minimum, the decision-making and documentation processes to be followed by the authorized official responsible for selection. This should cover the procedures to be used when an adverse recommendation has been received through the objective merit review process or when selection for funding recommendations may be made out of rank order or when selection for funding differs from the recommendations resulting from the merit review process. For example, published funding priorities may affect final selection for funding.

b. Merit Review for Noncompetitive Awards:

(1) The merit review for new noncompetitive awards shall consist of an objective merit review by a group of at least three professionally and technically qualified reviewers.

(2) Amendments for noncompetitive renewals and continuations of noncompetitive awards are not subject to a merit review by at least three qualified reviewers if there has been no substantial change in the scope of work of the original project.

5. Reviewers of Applications.

a. The DOC program office shall select reviewers on the basis of their professional qualifications and expertise. Reviewers of any particular application may be any mixture of Federal or non-Federal experts, sometimes including individuals from within the cognizant program office. However, the selecting official should not be involved in the review of applications for the purpose of determining whether to recommend the application for approval. If it becomes necessary for a selecting official to review applications for this purpose, the program office must obtain a conflict-of-interest review by FALD and prior written approval from the Grants Officer. The official grant file must contain documentation demonstrating that there is no conflict of interest or that any conflict is resolved. In addition, a review panel should have at least one member who is outside the chain of command of the selecting official whenever possible. Reviewers must evaluate and, in some cases, score the technical merits of applications and accompanying proposals.

b. Reviewers must comply with the requirements for the avoidance of conflict of interest discussed at Chapter 16, Section D., of this Manual. In addition, each reviewer shall be required to certify in writing that he or she will use the application information only for review and to treat it in confidence except to the extent that the information is available to the general public from any source without restriction as to its use. Further, each reviewer must agree to comply with any

notice or restriction placed on the application. Upon completion of the review, the reviewer shall return to DOC or destroy all copies of the application and accompanying proposals (or abstracts, if any). Unless authorized by DOC, the reviewer shall not contact the applicant concerning any aspect of the application. Non-Federal reviewers must fill out the CD-571, "Reviewer Conflict of Interest and Confidentiality Certification for Non-Governmental Peer Reviewers," or an equivalent certification.

c. When using experts from the private sector to review grant proposals, program officials must assess whether the Paperwork Reduction Act (PRA), 44 U.S.C. § 3501 *et seq.,* applies to the recruitment. The PRA likely applies if potential reviewers are asked to supply information other than a standard resume. Contact the appropriate information collection office for a determination on whether the PRA applies.

6. Review Groups/Panels. A review group may take the form of the following:

a. Field Readers/Mail Review. An objective merit review of applications may be obtained by using field readers to whom applications are sent for review and comment. Field readers may also be used as an adjunct to financial assistance application review committees when, for example, the type of expertise needed or the volume of financial assistance applications to be reviewed requires such auxiliary capacity.

b. Panels/*Ad Hoc* Committees. A panel or *ad hoc* review committee can be used to obtain consensus advice or independent recommendations on the technical merits of applications. Panels including non-Federal personnel should not use consensus scoring unless they comply with the requirements of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 1.

c. Federal Advisory Committees. These committees are generally only appropriate to review financial assistance applications when required by legislation. They must be established in accordance with the FACA. The OGC can provide advice about the Federal Advisory Committee Act. Program offices should be aware that any of the following may be deemed Federal Advisory Committees within the Act:

(1) Review groups with fixed membership and regular meetings;

(2) Formally structured review groups which elect or appoint their officers; or

(3) Review groups which provide consensus advice, by voting or scoring as a group, rather than by having each member of the group score or vote on each application as an individual reviewer.

C. Evaluation and Selection Requirements for Competition.

This Section contains procedures to be followed in conducting a full and open competition for discretionary awards. The selection procedures fall into two categories. One category, Group Competition, is that in which all applications are grouped together to compete with one another and are ranked in order of the independent reviewers' scores. The second category, Individual Qualification, is a review where each single application (the letter of intent (LOI), pre-application, or full proposal) is judged individually to determine its qualifications based on published criteria (*e.g.*, the notice may stipulate that the first complete applications received that meet the minimum published requirements

will be approved until the available funds are exhausted). The minimum requirements for each selection category are listed below.

[Note: The Program Office may also implement additional tiers of internal reviews between the independent or technical review and the final selection stage as long as the additional internal reviews are described in the FFO, along with the evaluation and selection criteria.]

1. Group Competition. The Program Office must prepare a rank ordering of the applications based solely on independent reviewers' evaluation and scoring of each complete application that meets the notice requirements. The selecting official must use the reviewer evaluation and any other selection criteria published in the solicitation as the standard for making recommendations to determine successful applicants. The selecting official must prepare a package: (1) demonstrating that the selection process is in compliance with the procedures published in the FFO or in the program regulations, and (2) summarizing the results of the competitive review, consisting of the following documentation:

a. Copy of authorizing legislation and appropriations act (only relevant pages);

b. Copy of the FFO soliciting applications, and the *Federal Register* Notice (FRN), as applicable;

c. Copy of any review instructions and checklists and other review documents provided to the independent reviewers;

d. List of reviewers (which may be coded to protect the identity of the reviewers);

e. List by rank order of the results of the merit review of all LOIs or pre-applications (if the LOIs and pre-applications were mandatory and a basis of precluding applicants from submitting full proposals), including the review of the LOIs and pre-applications by the independent reviewers, reviewers' scores, and the ranked scores of each application;

f. List of all applications/proposals rejected and the reason(s) for rejection;

g. List by rank order of the results of the merit review of applications/proposals (including the review of pre-proposals, if such a review will result in one or more applicants being prohibited from submitting full proposals and thereby not being able to compete further for an award) by the independent reviewers, to include reviewers' scores and the average score of each application;

h. Copies of completed reviewer's score or evaluation sheets;

i. List of applications/proposals selected and recommended for funding by the selecting official and the reason as allowed by the published criteria for selection, including justification for funding application if out of rank order;

j. A copy of FALD comments, if any, and the Program Officer's response; and

k. Identification of the selecting official.

2. Individual Qualification. The Program Office must adequately document the selection process based on the reviewer evaluations of each complete application that meets the notice requirements. The selecting official will use the reviewer/panel evaluations and other selection criteria published in the solicitation in making recommendations to determine the successful applicants. The selecting official must prepare a package: (1) demonstrating that the selection process is in compliance with the procedures published in the FFO, the *Federal Register* notice, as applicable, or in the program regulations, and (2) summarizing the results of the review consisting of the following documentation:

a. Copy of authorizing legislation and appropriations act (only relevant pages);

b. Copy of the FFO soliciting applications, and the *Federal Register* Notice (FRN), as applicable;

c. Copy of any review instructions and checklists and/or other review documents provided to the reviewers;

d. List of reviewers (may be coded to protect the identity of the reviewers);

e. Evaluation of the application and accompanying proposal and basis for selection;

f. A copy of FALD comments, if any, and the Program Officer's response; and

g. Identification of the selecting official.

D. Review Process for Applications for Competitive Awards.

1. Posting an FFO on Grants.gov or Publishing a *Federal Register* Notice, as applicable. Applications must be solicited via an FFO posted on Grants.gov in accordance with the Guidelines at Chapter 19, "Guidelines for the Preparation of Public Notices Announcing the Availability of Financial Assistance Funds – Synopses, Federal Funding Opportunity (FFO) Announcements, *Federal Register* Notices," of this Manual.

2. Program Office Review. Upon receipt of applications, Program Office staff will review applications for completeness and ensure that all requirements of the FFO, authorizing statute, and *Federal Register* Notice, as applicable, have been met. The Program Office will arrange for all complete applications to be reviewed by a group of three or more reviewers in accordance with Section B. of this chapter. In coordination with the Grants Office, the Program Office may conduct negotiations with applicants deemed meritorious by the review panel and determined by the Program Office to stand a reasonable chance of being funded.

3. Grants Office Review. The Grants Office will conduct a final review of all applications recommended for funding by the Selecting Official. The Grants Officer is the DOC official who makes the final decision for the Government on whether to fund an application. The Grants Officer's final decision must be consistent with published policies, *e.g.*, the applicant is not delinquent on a Federal debt.

4. OGC Review. The OGC will review grant applications and supporting documents for proposed awards where Federal funding exceeds $150,000. The OGC will advise the Grants Officer on all matters

related to law and the legal form and effect of these proposed award actions. The OGC will be available to assist and respond to questions about any individual financial assistance action.

E. Review Process for Applications for Institutional Awards.

1. New Recipients. New recipients under institutional award programs must be selected after full and open competition. The procedures in Section D. of this chapter should be followed in the initial selection of a new recipient under a discretionary institutional program.

2. Future Awards. Once a recipient has been approved for funding under an institutional award, the procedures used for applications for nondiscretionary funding in Section G. of this chapter will be followed for future applications for subsequent new awards under the program if the incumbent recipient is performing satisfactorily.

3. Periodic Reviews. Reviews of programs that make institutional awards must be conducted at least once every five years to evaluate the effectiveness and continued desirability of the use of institutional awards in accordance with Chapter 16, Section K.2., of this Manual. The results of these reviews must be a consideration by both the Program Officer and the Grants Officer in making a determination to continue providing funding without competition to each recipient of an institutional award.

F. Review Process for Applications for Noncompetitive Awards Made with Discretionary Funds.

The following procedures will be followed when the Program Office is considering a noncompetitive application for discretionary funding:

1. Program Office Review.

a. The Program Office, in consultation with the Grants Office, initiates the process of deciding whether to fund a noncompetitive award with discretionary funds by determining whether the application meets the criteria listed below. The Program Office will arrange for the application to be reviewed in accordance with the review standards in Section B.3.b. of this chapter. The purpose of this review is to provide advice to the selecting official as to the technical soundness and merits of the application. If the application does not meet the criteria for consideration as a noncompetitive award, the Program Office will return the application to the applicant with an explanation as to why it cannot be considered.

b. If the application warrants review on a noncompetitive basis, an appropriate program official must provide a written justification for the noncompetitive award to the Grants Officer for approval. The justification for the noncompetitive award must include one or more of the conditions listed below and must provide sufficient basis for the determination(s):

(1) Only One Source Identified. There may be instances where only one responsible applicant can perform the work of the proposed award. The following are some of the circumstances in which this may occur:

(a) The applicant organization has proprietary information necessary for the conduct of the work. In the case of the applicant organization having proprietary information, the program officer must describe what the proprietary information is that is offered by the applicant and why it is that no others could possibly possess the information. The program officer provides this noncompetitive justification documentation. An applicant's claim is not sufficient justification. The program officer must state in writing that, based on his or her own expertise or the expertise of others he or she has consulted, the applicant has proprietary information necessary for the conduct of the work.

(b) The applicant organization has made a substantial investment in the activity. In the case of the applicant organization having made a substantial investment in the activity, the nature and amount of that investment should be described. The applicant's receipt of previous Federal awards for the activity does not constitute substantial investment. The applicant's own resources must be involved.

(c) The applicant organization is proposing a project that involves a unique idea, method, or approach. In the case of the applicant organization proposing a project with a unique idea, method, or approach the nature of the idea, method, or approach and what makes it unique should be described.

(d) The applicant organization is the only organization known to possess the capability to perform the work. In the case of the applicant organization being the only one known to possess the capability to perform the work, the program officer has to describe how that was determined. The justification could be based on the specific situation involving the project (for example, the recipient needs to be a university that awards doctoral degrees and the identified recipient is the only one in the targeted geographic area which does that) or the program officer's efforts to determine if other organizations can do the work (for example, by contacting other potential recipients to determine if they have the capability or interest in carrying out the proposed project).

(2) Unusual and Compelling Urgency. The work to be conducted is of such an unusual and compelling urgency that the public interest would be seriously compromised unless the Program Office is allowed to limit or suspend competition for the proposed award.

(3) International Agreement. Competition is precluded by the terms of an international agreement or a treaty between the United States and a foreign government or international organization.

(4) National Security. Full and open competition is not required when the Secretary of Commerce determines in writing that public disclosure of the proposed support to be provided under the award would compromise the national security.

(5) Public Interest. Competition is not required when the Head of the Operating Unit determines in writing that it is not in the public interest in a particular case to seek full and open competition for an award. A rational basis must be set forth in the written determination. An example of a situation that might support a public interest determination is the implementation of a pilot project.

(6) Congressional Direction. Competition is not required when the Operating Unit's Chief Financial Officer and/or Budget Officer or designee has provided notification to the Program Office that Congress has expressed its intent to fund the application by including language in the House Report, Senate Report, and/or Conference Report - - identify a project, recipient, or both. Other forms of legislative history (*e.g.*, floor debates, insertions in the Congressional Record, etc.) or Congressional communications (*e.g.*, press releases, letters to agencies, discussions with staff, etc.) independent of report language are not a basis for justifying issuance of a discretionary award without competition. However, these other forms of legislative history or communications may be used to identify the recipient in those situations where Congress expresses its intent to fund a project but does not identify a specific recipient in the report language accompanying the appropriations act. These other forms of legislative history or communications may also be used to identify the project in those situations where Congress expresses its intent to fund a recipient but does not identify a specific project in the report language accompanying the appropriations act. This basis for issuing a non-competitive award is currently not available as a result of Executive Order (E.O.) 13457, "Protecting American Taxpayers From Government Spending on Wasteful Earmarks," January 29, 2008. If the E.O. is rescinded, the non-competitive justification based on Congressional direction will become available again.

c. If the application is determined to be meritorious and appropriate for funding on a noncompetitive basis, the Program Office, in conjunction with the Grants Office, will negotiate the terms and conditions of the award and the level of funding.

2. Grants Office Review. The Grants Office will conduct a final review of all proposed noncompetitive applications recommended for funding by the selecting official. The Grants Officer is the DOC official who makes the final decision for the government on the acceptability of the justification for award without competition and whether to fund noncompetitive applications.

3. OGC Review. The OGC reviews all noncompetitive applications and supporting documentation proposed for award to advise the Grants Officer as to legal form and effect.

G. Review Process for Applications for Awards Mandated or Limited by Statute.

1. Notice. Only eligible applicants must be notified of the availability of funds for nondiscretionary awards. The notice must be in writing and it may take the form of a *Federal Register* notice, letter to all eligible applicants, or other appropriate form(s) of written notice.

2. Program Office Review. The Program Office staff will conduct the initial screening of the application(s) in accordance with Section B. of this Chapter, review the application(s) for accuracy and completeness, and will conduct any necessary negotiations with the applicant(s). The Program Office will arrange for the application(s) to be reviewed by at least one merit reviewer. The purpose of this review is to provide advice to the selecting official as to the technical soundness and merits of the application. If deficiencies are identified, the applicant will be contacted by the Program Office staff and asked to revise the proposal and application accordingly.

3. Grants Office Review. In coordination with the Program Office, OGC, OIG, and other offices as appropriate, the Grants Office will conduct a final review of <u>all</u> applications for nondiscretionary funds that are recommended for funding by the appropriate program official. The Grants Officer is the DOC

official who approves the application for funding. The Grants Officer's final decision must be consistent with published policies, *e.g.*, the applicant is not delinquent on a Federal debt.

4. OGC Review. The OGC will review all nondiscretionary applications and supporting documents for proposed awards to advise the Grants Officer on all matters related to law and the legal form and effect of the proposed award actions.

5. OIG Review. The OIG will conduct pre-award screening of proposed recipients and advise the Grants Officer whether the applicant should be considered a responsible recipient or whether there are conditions which draw into question the business integrity, honesty, financial stability, or practices of the applicant and/or its key officials.

H. Congressional Notification.

1. Once an award with Federal funding of more than $150,000 is ready to be approved, the Grants Office shall provide information for the Congressional notification to DOC Office of Legislative and Intergovernmental Affairs (OLIA). The OLIA deployed WebDocFlow-Grants, an automated management and notification tool, in January FY 2012. All DOC operating units are expected to interface with WebDocFlow-Grants and utilize it in their Congressional notification process. Information for awards with Federal funding of $150,000 or less shall be provided to the appropriate Congressional affairs office within each operating unit. For multi-year awards, the amount to be announced is the initial amount to be obligated, not the total amount of the award; subsequent funding is reported when the additional funding is added to the award.

2. Once an award with Federal funding is ready to be approved, the Grants Office shall update both OLIA's Grants Notification System so that Congressional notification may be conducted, as well as for USA Spending.gov. For multi-year awards, the amount to be announced is the initial amount to be obligated, not the total amount of the award; subsequent funding is reported when the additional funding is added to the award. OLIA should notify Congress or other appropriate officials within two workdays that the proposed awards are pending and will be made shortly. OLIA may, at its discretion, authorize a different procedure for notifying Congress of pending awards. Three workdays after submission of the electronic information, the Grants Officer may approve the award, unless OLIA has placed a "hold" on the award in the database. For example, an award not being "held" by OLIA could be approved by the Grants Officer on Friday if information was electronically provided to the database on Tuesday.

I. Obligation of Funds.

The cognizant Grants Officer is the only official authorized to sign awards to obligate funds for the Department for grants and cooperative agreements. The Grants Officer's decision to obligate funds must be an independent decision, made only after he/she is personally satisfied that it is appropriate to make the award. The Grants Officer's signature on the Form CD-450, "Financial Assistance Award," or on the Form CD-451, "Amendment to Financial Assistance Award," constitutes an obligation of Federal funding. Grants Officers must promptly notify Program and Accounting/Finance Offices when funds have been obligated.

J. Notice to Applicants

1. Successful Applicants. The Grants Officer will notify successful applicants in a written Award Notice when they have been selected for an award. Prior to official Grants Officer notification, other officials and employees from the operating unit are prohibited from either formally or informally notifying applicants verbally or in writing that they have been selected for awards.

2. Unsuccessful Applicants.

a. After consultation with the Program Officer, the Grants Officer shall determine the best method for notifying unsuccessful applicants. These notifications must be in writing. Notification can take place in either of the following ways:

(1) As soon as the Grants Officer has notified the successful applicants in writing that they have been selected for an award, the Program Office will notify all unsuccessful applicants that they were not selected for funding.

(2) With approval of the Grants Officer, the Program Office may notify all unsuccessful applicants that their applications are not being recommended for funding when the selecting official has decided which applications to recommend to the Grants Officer for further action.

b. Applications, correspondence, and other records relating to unsuccessful (rejected, withdrawn, or unfunded) applications may be destroyed three years after rejection or withdrawal. This policy concerning disposition of unsuccessful applications should be included in the Federal Funding Opportunity announcement.

c. Unsuccessful applicants may request a debriefing, which will provide constructive feedback that can assist applicants to develop improved proposals in the future. Briefings should take the form of advice to applicants on the strengths and weaknesses of their own proposal in terms of the published evaluation and review criteria.

9. PRE-AWARD ADMINISTRATIVE REQUIREMENTS

A. Application Package.

For discretionary competitive programs, each DOC Program Officer must prepare an application package, which may be in electronic format. Application packages should include all of the information that prospective applicants need to apply for an award under the program involved. The Program Officer should consult the Grants Officer when preparing the application package. The application package must be cleared by the Grants Officer and reviewed by FALD prior to issuance. It must also be reviewed by OAM prior to issuance if the application package contains any program specific forms or requirements beyond those listed below. Specific application package contents may vary; however, application packages must include the following minimum information.

1. Copy of the applicable FFO prepared in accordance with Chapter 19 of this Manual.

2. Application Forms. Program Officers must use the following OMB-prescribed standard forms, as applicable, and/or any other forms approved by DOC and OMB for inclusion in the application package. Generally, in the case of paper applications, the applicant is required to submit one original and two copies of these forms. Additional copies of these forms and unique or program-specific forms must be approved by DOC and OMB in accordance with the requirements of 5 CFR Part 1320, "Controlling Paperwork Burdens on the Public."

   a. Standard Form 424 - Application for Federal Assistance

   b. Standard Form 424A - Budget Information - Non-Construction Programs

   c. Standard Form 424B - Assurances - Non-Construction Programs

   d. Standard Form 424C - Budget Information - Construction Programs

   e. Standard Form 424D - Assurances - Construction Programs

   f. Standard Form 424 - Family of Forms for Research and Related Programs

   g. Standard Form 424 - Short Organizational Family

   h. Standard Form 424 - Individual Form Family

   i. Standard Form 424 - Mandatory Family

   j. Standard Form LLL - Disclosure of Lobbying Activities

   k. Form CD-511 - Certification Regarding Lobbying

   l. Form CD-512 - Certification Regarding Lobbying - Lower Tier Covered Transactions

3. Information about Intergovernmental Review of Federal Programs in accordance with the provisions of EO 12372, if the program is subject to this review. The following information should be provided:

a. A current list of the State Point of Contacts (SPOCs), including their names, addresses, and telephone numbers;

b. The address to which the SPOCs should send any State process recommendations; and

c. The specific due date for State process recommendations (formally 60 days after the application deadline date), and a statement that the funding agency does not guarantee to "accommodate or explain" for State process recommendations received after that date.

B. Recommendation for Funding.

Once an application has been identified as one that will be recommended for funding, the Program Office staff will ensure that complete application recommendation packages are prepared to be forwarded to the Grants Officer. The following are minimum requirements for a complete application recommendation package:

1. Application (Standard Form 424 Series or SF-424 Family of forms, or other authorized forms) with original or electronic signature, including complete proposal with any revisions; a detailed budget narrative; a copy of the current approved negotiated indirect cost agreement (if budget includes indirect costs and the applicant has a negotiated agreement), as applicable; and signed Forms CD-511, and SF-LLL, as applicable.

2. Recommendation memorandum from the selecting official, indicating if the award is intended to be a grant or a cooperative agreement. If the award is recommended to be a cooperative agreement, the package must include a description of the funding agency's substantial involvement. The Grants Officer will make the final decision concerning the type of funding instrument.

3. Copy of the applicable FFO or the justification for noncompetitive award as provided in Chapter 8, Section F; the original documentation of the review panel's evaluations; and the selecting official's basis for determination to recommend for funding based on program priorities if not already provided in a summarized package in accordance with Chapter 8, Section C. When institutional awards are providing additional funding without competition through either a new award or an amendment, a summary including the date of the most recent report and brief description of the results of the last program review conducted in accordance with provisions of Chapter 16, Section J.2., of this Manual must be included.

4. The Budget Officer's or other responsible official's certification (e.g., Grants Management Information System funding tab or Grants Online procurement request) of availability of funds.

5. Credit report, if applicable.

6. Copy of all pertinent pre-award correspondence with the applicant.

C. Budget Analysis.

Prior to award of a grant, the Program Officer and Grants Officer must perform a thorough review and evaluation of the applicant's proposed budget data, documentation of which will be maintained in the official grant file. Costs charged to a financial assistance award must be allocable, allowable, and reasonable.

1. When the budget data provided by the applicant does not provide the level of detail sufficient for an informed analysis to be performed, the Grants Officer or Program Officer shall contact the applicant for additional information or clarification. In the unusual circumstance that an award is approved without proper and complete budget information, a special award condition must be included in the award requiring submission of needed information within a specified time period. The official award file must contain a written justification for approving the award prior to receipt of budget information.

2. The budget analysis must include the evaluation of cost data, including a determination that the costs proposed are in accordance with applicable cost principles; the evaluation of specific elements of costs; and projection of these data to determine the effect on such factors as:

   a. The allowability and necessity for individual cost categories;

   b. The reasonableness of amounts estimated for necessary costs;

   c. The basis used for allocating indirect or overhead costs; and

   d. The appropriateness of allocating particular overhead costs to the proposed project as direct costs.

3. Projects may be funded in increments as described in Chapter 20, Multi-Year Funding Procedures.

D. Costs.

Eligible costs under a DOC financial assistance award must be in accordance with the applicable cost principles.

1. Cost Sharing or Matching Funds. Cash and in-kind contributions that are included in the budget of the award must be valued in accordance with the applicable administrative requirements and are subject to the appropriate cost principles. For grants and cooperative agreements to institutions of higher education, hospitals, other non-profit, and commercial organizations, see 15 C.F.R. § 14.23, and for grants and cooperative agreements to State, local and Indian tribal governments, see 15 C.F.R. § 24.24.

   a. All awards that include Federal and non-Federal sharing incorporate a budget consisting of shared allowable costs. If actual allowable costs are less than the total approved budget, the Federal and non-Federal cost shares shall be calculated by applying the approved Federal and non-Federal cost share ratios to actual allowable costs. If actual allowable costs are greater than the

total approved budget, the Federal share shall not exceed the total Federal dollar amount authorized by the award.

b. The non-Federal share, whether in cash or in-kind, is to be paid out at the same general rate as the Federal share. Exceptions to this requirement may be granted by the Grants Officer based on sufficient documentation demonstrating previously determined plans for, or later commitment of, cash or in-kind contributions. In any case, the recipient must meet its cost share commitment over the life of the award. The recipient must create and maintain sufficient records justifying all non-federal sharing requirements to facilitate questions and audits.

c. Waiver for Insular Areas. In accordance with provisions of Public Law 95-134, Title V, § 501 (1977), as amended (48 U.S.C. 1469a), DOC has determined that any requirement for local matching funds under $200,000 (including in-kind contributions) to be provided by American Samoa, Guam, the Virgin Islands, and the Northern Mariana Islands shall be waived, notwithstanding any other provision of law. Any matching funds otherwise required by law to be provided by government entities of an insular area may be waived at the discretion of the operating unit.

2. Direct Costs. Costs that are directly related and can be traced to the cost of the project being supported and that are within approved budget categories may be charged to the award. For example, if the budget provides costs only for Personnel, Fringe Benefits, Supplies, Equipment, and Travel, the recipient is not allowed to charge to the award costs for Contracting or Consultants without the prior written approval of the Grants Officer.

3. Federal Employee Expenses. An agency is generally barred from accepting funds from a recipient to pay transportation, travel, or any other expenses for any Federal employee. Use of award funds (Federal or non-Federal) or the recipient's provision of in-kind goods or services for the purposes of transportation, travel, or any other expenses for any Federal employee may raise appropriation augmentation issues. In addition, Department policy may prohibit the acceptance of gifts, including travel payments for federal employees, from recipients or applicants regardless of the source. Program Officers and Grants Officers should contact the FALD for guidance on such issues.

4. Indirect Cost Rates. Indirect cost rates will generally be in accordance with negotiated indirect cost rate agreements which are established for all a recipient's Federal assistance awards by its cognizant agency. The Program Officer should consult with the Grants Officer and FALD before limiting indirect costs. Any proposed limitation must be published in the *Federal Register*, program regulation, or FFO. The recipient should be advised to provide OAM and the funding bureau with a copy of its proposal for a negotiated rate when DOC is the cognizant agency. (For awards subject to OMB Circular A-21 (*Cost Principles for Educational Institutions*, 2 CFR Part 220), the term "indirect costs" has been replaced with "facilities and administrative costs.")

5. Pre-Award Costs. Payment of pre-award costs may only be considered where costs are incurred prior to the award, but after program authority has been enacted and the appropriation becomes available, unless a contrary indication exists in the language or legislative history of the program statutory authority or appropriation. If pre-award costs are incurred before the funding becomes available, but after program authority exists, pre-award costs may be awarded on a case-by-case basis, depending on statutory language, legislative history, or other particular factors, such as applicable program regulations. Pre-award costs incurred before both program authority and funding are available

may generally not be funded retroactively. Questions about availability of appropriations for pre-award costs should be directed to the FALD.

a. Approval of pre-award costs should be kept to a minimum. Generally, the period for such costs should not exceed 90 days prior to the start of the project period.

b. When a request for approval of pre-award costs is required, an applicant should provide a written request to the Program Officer at the earliest possible time. (See 15 CFR § 14.25(e) for prior written approval requirements for pre-award costs, including the requirements for research awards.) The request should contain the following information: Pre-award time period, line item budget for the period, narrative description of the task to be completed, and a compelling justification of why the government should approve pre-award costs. The Program Officer should analyze the request and provide a recommendation to the Grants Officer. The Grants Officer will review the recommendation and the applicant's request. If the pre-award request is disapproved, the Grants Officer will notify the recipient in writing. If the request is approved, notice will be incorporated into the award document.

6. Profit or Fee. Fee or profit or other increment above cost may not be paid on Department of Commerce financial assistance awards unless there is statutory authorization to do so. Requests for fee or profit by recipients of any type should be referred to FALD for review. Conference fees to cover allowable costs, such as meals (excluding entertainment and alcohol) or room space and materials, are considered program income and not fees. Program income is allowable. Recipients should refer to the guidance for program income in item 7 below.

7. Program Income.

a. Recipients are required to account for program income related to projects financed in whole or in part with Federal funds. Program income is gross income earned by the recipient that is directly generated by a supported activity or earned as a result of the award. Program income excludes interest earned on advances and includes, but is not limited to, income from service fees, conference fees, sale of commodities, usage or rental fees, and royalties on patents and copyrights.

b. Proceeds from the sale of real and personal property purchased in whole or in part with Federal funds is not program income and shall be handled in accordance with the property management provisions set forth in the award.

c. Recipients have no obligation to the Federal Government with respect to program income earned from license fees and royalties, copyrighted material, patents, patent applications, trademarks, or inventions produced under the award, unless otherwise required by statute, agency regulations, or the terms and conditions of the award. In particular, inventions made under an experimental, developmental, or research award must comply with the requirements of 35 U.S.C. Chapter 18, "Patent Rights in Inventions Made with Federal Assistance," and 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts, and Cooperative Agreements."

d. The disposition of program income shall be in accordance with the applicable Federal administrative requirements and will be specified in the terms and conditions of each award. See 15 CFR § 14.24 or 15 CFR § 24.25, as applicable.

E. "Intergovernmental Review of Federal Programs," Executive Order (E.O.) 12372.

In accordance with E.O. 12372, each operating unit shall provide the states the opportunity for consultation on proposed Federal financial assistance and direct Federal development programs. The E.O. was issued with the desire to foster intergovernmental partnership and strengthen federalism by relying on State and local processes for the coordination and review of proposed Federal financial assistance and direct Federal development. Under the E.O., state and local officials, not the Federal Government, will determine what Federal programs and activities to review and the procedures for the review.

F. Applicant's Management and Financial Capabilities.

DOC policy is to make awards to applicants and recipients who are competently managed, responsible, capable, and committed to achieving the objectives of the awards they receive. It is essential, therefore, that precautions be taken to award grants only to reliable and capable applicants who can reasonably be expected to comply with award requirements. Therefore, the following pre-award screening of applicants for financial assistance awards will be conducted as appropriate.

1. Credit Checks. A credit check will be performed on individuals, for-profit, and non-profit applicants. In instances where applicants are delinquent in their Federal obligations, including Federal tax liens, or if any other negative findings are reported, the Grants Officer must investigate those findings and determine whether an award is justified despite negative findings or whether the applicant should be designated as a high-risk recipient (*see* Section G. of this chapter). A copy of the justification for funding despite negative findings signed by the Grants Officer, credit report, and description of actions taken to investigate/resolve negative findings concerning non-responsibility determinations must be included in the official award file. The final decision will rest with the Grants Officer. Credit reports should generally be obtained through the Federal Supply Schedule negotiated by the GSA. A listing of contractors that provide collection services under the Treasury Debt Collection contract can be found at the Department of the Treasury's Website at www.fms.treas.gov.

2. Delinquent Federal Debts. A review will be conducted of the accounts receivable listings of each DOC Finance Office and of the credit report for delinquent debts to the Federal Government. No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either:

   a. The delinquent account is paid in full;

   b. A negotiated repayment schedule is established and at least one payment is received; or

   c. Other arrangements satisfactory to DOC are made.

3. List of Parties Excluded from Procurement and Non-Procurement Programs. The Excluded Parties Listing System (EPLS), consolidated into the System for Award Management (SAM), is maintained by the GSA (found at www.sam.gov). SAM lists parties excluded from Federal procurement and non-procurement programs will be checked to ensure that the recipient or principal investigator has not been debarred or suspended on a government-wide basis from receiving financial assistance. No awards shall be made to applicants who have been excluded from participating in Federal financial assistance programs. See 2 CFR Part 1326.

4. Past Performance. Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding if a determination of "non-responsibility" is made by the Grants Officer, based on recommendation of an appropriate program official (*see* Section G.3 below).

5. Pre-Award Accounting System Surveys. The Grants Office, in cooperation with the OIG when appropriate, may require a pre-award survey of the applicant's financial management system in cases where the recommended applicant has had no prior Federal support, the operating unit has reason to question whether the financial management system meets Federal financial management standards, or the applicant is being considered for a high-risk designation. If a pre-award survey is not conducted, a special award condition should be incorporated into the award to require the recipient to obtain a certification from a certified independent public accountant that the recipient's accounting system is adequate to meet the Federal financial management standards.

6. The Grants Officer will conduct a search of the Federal Audit Clearing House database at https://harvester.census.gov/fac/index.html to determine whether an applicant has an audit with findings that would impact the pre-award management and financial assessment.

G. High-Risk Recipients.

1. The Grants Officer is charged with determining whether an applicant is sufficiently responsible to receive Federal financial assistance in accordance with the requirements established in 15 CFR §§ 14.14 or 24.12, as applicable. The Grants Officer should use the following indicators to determine whether a high-risk designation is warranted.

a. Financial Instability. Circumstances that may be relied on as indications of financial instability include factors that contributed to bankruptcy or insolvency, or substantial financial dependency on Federal support. A decision not to make an award only on the basis of bankruptcy or insolvency may be in violation of 11 U.S.C. 525(a), which prohibits discrimination against organizations that have filed such actions;

b. Inadequate Internal Controls. Examples of inadequate internal financial or administrative controls include the following: (1) the inability to comply with the financial management standards or procurement standards in OMB and Treasury circulars which are grave enough to raise serious doubts whether the entity can properly account for Federal funds or use them for their intended purpose; (2) delinquency in payments to the Internal Revenue Service for Federal income and Federal Insurance Contributions Act taxes withheld from employees; and (3) delinquency in repaying a receivable to another Federal agency;

c. Unsatisfactory Performance under Other Federal Awards. Examples of unsatisfactory performance include material violations of award conditions, present debarment, suspension, or voluntary exclusion from Federal programs, termination of a previous award for cause, unsatisfactory or incomplete performance under a prior or current award, or failure to repay a debt owed to the Federal Government;

d. Irresponsible Officials or Key Employees. Examples of possible lack of responsibility are when officials or key employees of an entity responsible for administering a Federal grant:

(1) Have been convicted of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; or

(2) Have been convicted of any other offense indicating a lack of business integrity or business honesty that raises questions regarding the appropriateness of selecting the organization for Federal funding.

e. Unsatisfactory Audits. An applicant's responsibility may be an issue when prior audits, which have been resolved, indicate a lack of adherence to administrative and cost accounting guidelines, or a failure to achieve programmatic objectives resulting in disproportionately high disallowances;

f. Failure to submit Form SF-LLL, "Disclosure of Lobbying Activities," if required;

g. Failure to submit Forms SF-424B or SF-424D, as applicable; and

h. Other adverse information about the responsibility of the entity.

2. If sufficiently adverse factors about the applicant are discovered during the course of reviewing an application, the Grants Officer may, depending on their nature and severity:

a. Not make the award;

b. Delay the award until conditions are corrected; or

c. Consider the recipient to be "high-risk" and make the award with special award conditions to protect the Federal Government's interest, and inform the recipient of the corrective action(s) required to remove the special award conditions. *See* Section I.3.c.(2) of this chapter for guidance. *See also* 15 CFR §§ 14.14 or 24.12, as applicable.

3. In any instance where a Grants Officer intends to deny, or a program office fails to recommend, a grant or cooperative agreement to an applicant on the basis of pre-award concerns relating to the applicant's present responsibility, the applicant must be given notice of the Department's determination. Such a high-risk determination relates solely to the applicant's present responsibility and the particular award for which the determination is being made, and does not affect the applicant's eligibility for future awards. The notice to the applicant must provide the applicant an opportunity to submit information showing that the Department's determination is in error or otherwise warrants reconsideration. Once an adverse determination has been made, an award may be made to the next appropriate applicant. Whenever a "high risk" determination is made which will deny an award based on responsibility concerns, and the denial is part of a long-term plan to disqualify the applicant, DOC's formal debarment and suspension regulations (2 CFR Part 1326) must be followed. These regulations provide procedures for excluding organizations from participating in Federal procurement and nonprocurement activities on a government-wide basis. Failure to provide the appropriate procedures may expose DOC to a valid claim of de facto debarment based on an argument by the applicant that it has been denied due process of law. As a practical matter, government-wide debarment and suspension under 2 CFR Part 1326 are used only in the most serious cases, such as indictment for and/or conviction of criminal offenses.

4. The Grants Officer may take any of the steps identified below if adverse information on the recipient, or any key individual associated with the recipient, reflects significantly and adversely on the recipient's honesty or financial integrity, and is discovered after an award is made:

a. Require the removal of personnel from association with the management of and/or implementation of the project and require Grants Officer approval of personnel replacements; and

b. Consider designating the recipient as "high-risk" and unilaterally impose special award conditions to protect the Federal Government's interest, as appropriate, including making changes with respect to the method of payment and/or financial reporting requirements (*see* Subparagraph I.3.c.(2)) of this chapter for guidance; or

c. Terminate or suspend the award until corrective action has been taken. Such action should be taken only after the recipient has been afforded adequate due process as noted in section G.3. of this chapter.

d. Require the recipient to make other changes as appropriate.

5. If any of the adverse factors set forth in this chapter are present, the Grants Officer shall document the official grants file to indicate the circumstances, the nature of the action taken, and the reason.

H. Awards to Insular Areas.

Operating units are encouraged to consolidate financial assistance awards to insular areas when project activities are similar. If awards are consolidated, operating units shall take the following actions:

1. Provide for a single set of written program and financial reports for each consolidated award, instead of individual reports for each project activity which has been consolidated;

2. Receive centrally and distribute all requested reports to appropriate program offices;

3. Designate a primary contact with the recipient on all administrative matters related to the consolidated award;

4. Maintain one official grant file on the consolidated award; and

5. Review cost sharing requirements in accordance with provisions of section D.1. of this chapter.

I. Preparation of Financial Assistance Award.

1. Uniform Administrative Requirements. The uniform administrative requirements that apply to a specific grant depend on the type of recipient.

a. "*Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments*," 15 CFR Part 24, applies to State, local, and Federally-recognized Indian tribal governments.

b."*Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, Other Non-Profit, and Commercial Organizations*," 15 CFR Part 14, applies to institutions of higher education, hospitals, other non-profit, and commercial organizations. This part also applies to grants and cooperative agreements awarded to foreign governments, organizations under the jurisdiction of foreign governments, and international organizations unless otherwise determined by the Grants Officer after coordination with the appropriate program officials.

2. Cost Principles. The Federal cost principles that apply to a specific grant also depend upon the type of recipient.

a. "*Cost Principles for Educational Institutions*," 2 CFR Part 220 (OMB Circular A-21), applies to public and private institutions of higher education.

b. "*Cost Principles for State and Local Governments*," 2 CFR Part 225 (OMB Circular A-87), applies to state, local, and Federally-recognized Indian tribal governments.

c. "*Cost Principles for Non-Profit Organizations*," 2 CFR part 230 (OMB Circular A-122), applies to non-profit organizations.

d. "*Contracts with Commercial Organizations*," 48 CFR Part 31, applies to for-profit organizations and individuals.

e. "*Principles for Determining Costs Applicable to Research and Development under Grants and Contracts with Hospitals*," Appendix E to 45 CFR Part 74, applies to hospitals other than those that are non-profit.

3. Award Document. The Form CD-450, "*Financial Assistance Award*," or Form CD-451, "*Amendment to Financial Assistance Award*," shall be used as the award documents for all grants or cooperative agreements funded by DOC. The following information must be included in every award:

a. The Project Period.

(1) The award must include a start date and end date. Project periods should not exceed five (5) years.

(2) The beginning of the project period should not ordinarily precede the Grants Officer's signature date (award date). In order to avoid delays that could possibly jeopardize the success of a project or possibly result in the recipient putting itself at risk by incurring costs without having a properly executed award document, applications should be requested and processed in a timely manner.

(3) Procedures for funding proposals that include a project description and budget incorporating more than one year of activity when only a portion of the entire amount of Federal funding is available are found in Chapter 20, "*Multi-Year Funding Procedures*" of this Manual.

b. Budget. A budget must be included in every award. It shall be used as the established standard for financial monitoring purposes. Changes made to the budget once the award is issued

must be made in accordance with the DOC Standard Terms and Conditions, applicable regulations, and OMB Circulars. Each budget contains a detailed listing of categories of costs which are allowable under the award. Only those categories of costs which have funding included in the approved budget are considered allowable costs under a grant or cooperative agreement. The recipient cannot add a new budget category to an approved budget without prior written approval from the Grants Officer.

c. Special Award Conditions. In addition to the laws, regulations, OMB Circulars, DOC Standard Terms and Conditions, and Program-Specific Terms and Conditions controlling the administration of a grant, special award conditions may also be imposed when justified by circumstances. Special award conditions imposed after the award has been made must be agreed to by both the recipient and the Federal Government unless Federal law or regulation provides the Federal Government with the right to impose special award conditions under the grant in accordance with 15 CFR §§ 14.14, 14.62 24.12, or 24.43, as applicable. Department-wide or program specific special award conditions should be used, as applicable, in all DOC grants and cooperative agreements. Other special award conditions may include the following:

(1) When a cooperative agreement is selected as the funding instrument, the award must include, at a minimum, those items described in subparagraphs a. through c. below. When not clearly and specifically provided for in the application, proposal, or other statement of work that is incorporated in the award, special award conditions shall be included that provide:

a. A project management plan identifying the respective role, responsibility, obligation, and accountability of each project participant;

b. A statement of how project performance will be measured; and

c. A statement delineating the expected level of substantial Federal involvement.

(2) In the event that the applicant or recipient is considered "high-risk," the Grants Officer will notify it (in writing and in as timely a fashion as possible) of:

a. The nature of the special award conditions or restrictions and the basis on which they are being imposed, which may include:

(i) Payment only on a reimbursement basis;

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

(iii) Requiring additional, more detailed financial reports;

(iv) Additional project monitoring;

(v) Requiring that technical or management assistance be obtained;

(vi) Establishing additional requirements for prior approval; or

b. The corrective action which must be taken by the applicant or recipient before the special award conditions will be removed and the time allowed for taking the action; and

c. An explanation of how the applicant or recipient may request reconsideration of the special award conditions or restrictions being imposed.

(3) Where OMB guidance or DOC regulations and policy permit, the Grants Officer may use special award conditions to waive certain administrative requirements. When waiving these prior approval requirements, the Grants Officer may elect to require that the recipient provide notification after a specific action has been taken.

d. Standard Terms and Conditions.

(1) The "*Department of Commerce Financial Assistance Standard Terms and Conditions*" must be incorporated into each award, except EDA construction awards and revolving loan fund (RLF) awards.

(2) EDA includes separate standard terms and conditions in its construction-related awards and revolving loan fund (RLF) awards, respectively, which derive from the DOC Standard Terms and Conditions in consultation with, and after timely consideration and comment from, OAM and FALD.

10. Post Award Administration Requirements

A. Official Award File.

There shall be a single official award file for each award. The Grants Officer shall be the custodian of the official award file, responsible for maintaining a complete and accurate official award file, and shall determine where the file is maintained. The file shall be DOC's official record of all administrative, financial, and programmatic activities which occurred under the award. The official award file shall be used for managing the award, resolving disputes, litigation, audits, reporting to Congress, answering FOIA requests, and for all other official purposes. Grants Office and Program Office personnel shall ensure that all pertinent correspondence, notes, reports, amendments, and other relevant information are included in the official award file. Wherever the Manual requires written documentation, electronic forms of the documentation are included, so long as it is clear where the electronic information is located and that it can be retrieved as necessary. At a minimum, and as applicable, the official award file must include or have available for easy access the following:

1. The original signed application forms, as applicable (SF-424 form family, or OMB approved alternative to these forms). In addition, the official file must include required DOC forms including, but not limited to, the CD-511 and SF-LLL, when applicable.

2. The original applicant proposal, budget, and any amendments.

3. Documentation of the analysis upon which the award selection was based including evaluations, scores, justifications, etc. This documentation must clearly demonstrate that the selection procedures have met the requirements contained in Chapter 8 of this Manual.

4. Internal review and clearance documents including all required signatures from the budget office, legal counsel, OIG, grants office, and any other pertinent reviews and/or concurrences determined to be necessary by the Grants Officer.

5. Certification that all required and applicable pre-award administrative procedures were completed. These procedures include but are not limited to the following:

   a. Assurance that the recipient was competitively selected by an independent review process or that appropriate noncompetitive review procedures were followed in accordance with Chapter 8 of this Manual and that the official award file contains the required documentation with respect to review and selection procedures;

   b. Review of credit reports to determine if negative findings are reported;

   c. Review of the GSA "Excluded Parties List System (EPLS)," as consolidated in SAM (www.sam.gov), to determine whether the applicant has been debarred, suspended, or otherwise excluded from receiving financial assistance;

   d. Verification that a completed Form CD-511, "Certification Regarding Lobbying," is complete;

e. The appropriate funding instrument was used in a particular transaction, i.e., grant, cooperative agreement, or contract;

f. Review of past performance evaluations if the applicant has received past funding under the program;

g. Review of any known unresolved or unimplemented audit findings more than six months old;

h. Review of accounts receivable listings to determine if the applicant has delinquent debts with the Department; and

i. Assurance that the proposed award was coordinated with any other operating units or Federal agencies, as appropriate.

7. Original fully executed award documents and any amendments with all attachments (except OMB Circulars and applicable uniform administrative requirements, which will be listed on the award document).

8. Memoranda of negotiations with the recipient, if applicable, and correspondence between the recipient and the organization unit in the pre-award and post-award phases.

9. Advance understandings or waivers of generally applicable award requirements.

10. Documentation when delegation of authority is authorized in accordance with Chapter 4, Section A.2., of this Manual. The following is the minimum documentary information which must be a part of the official file when the Grants Officer exercises this delegation of authority:

a. The specific section of 15 CFR Part 14 for which a less restrictive requirement is imposed or for which a case-by-case exception is made;

b. The reason/justification for approval of the less restrictive requirement or the exception; and

c. The special award condition included in the grant or cooperative agreement to provide the less restrictive requirement or exception.

11. Performance/program, financial, patent, property, and other reports submitted by the recipient and all written evaluation/clearance by the Program Officer or other officials.

12. Property records, including any documentation relating to disposition of property or the filing of security interests. The Tangible Personal Property Report (SF-428) and the Real Property Status Report (SF-429) should be included in documentation, as applicable.

13. Recipient requests for changes requiring amendments, and all correspondence and evaluations of the proposed changes.

14. Site visit reports, as applicable.

15. Project audit reports, including documentation of actions taken, the resolution and implementation of audit findings.

16. Close-out documents including, but not limited to, final financial, progress, property, patent, copyright, and other close-out reports required under the terms and conditions of the award.

17. Other correspondence regarding the project including, but not limited to, interagency and Congressional correspondence.

18. Documentation of any agreements to transfer funds from other agencies including, but not limited to, interagency agreements pursuant to the Economy Act or other special agreements. The file must clearly reference the authority under which funds are transferred, the transferring agency's authority to transfer the funds and its ability to award financial assistance for such a project, and DOC's authority to accept the funds and to award funds for that specific project.

B. USASpending.gov.

The Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109–282; codified at 31 U.S.C. 6101 note) (FFATA).

1. The FFATA requires information on Federal awards (Federal financial assistance and expenditures) be made available to the public via a single, searchable Web site. This information is available at USASpending.gov. Recipients and subrecipients must include the following required data elements in their application:

a. The name of the entity receiving the award;

b. The amount of the award;

c. Transaction type, funding agency, Catalog of Federal Domestic Assistance Number, and descriptive award title;

d. Location of: entity, primary location of performance (City/State/Congressional District/Country; and

e. Unique identifier of entity.

2. Reporting Subawards and Executive Compensation. Prime grant recipients awarded a new Federal grant greater than or equal to $25,000 on or after October 1, 2010, other than those funded by the Recovery Act, are subject to FFATA subaward reporting requirements as outlined in 2 CFR part 170. The prime recipient is required to file a FFATA subaward report by the end of the month following the month in which the prime recipient awards any sub-grant greater than or equal to $25,000. *See* Public Law 109–282, as amended by section 6202(a) of Public Law 110–252 (*see* 31 U.S.C. 6101 note). The DOC incorporates the award term required by Appendix A of 2 CFR part 170 into all financial assistance awards. *See* *http://www.gpo.gov/fdsys/pkg/CFR–2011-title2-vol1/pdf/CFR–2011-title2-vol1-part170-appA.pdf* for the full award term.

C. Costs under DOC Awards.

Costs under DOC awards shall be governed by the applicable uniform administrative guidelines, cost principles, and award terms and conditions.

D. Amendments.

DOC awards can only be amended, changed or modified by the cognizant Grants Officer. No other DOC official is authorized to make amendments, changes, or modifications to awards. For no-cost administrative changes, the Grants Officer may elect to issue a letter notifying the recipient of the change and documenting said change in the official award file, instead of issuing a CD-451, when the change does not meet any of the following criteria:

- change in scope or objective;
- revisions requiring additional funds;
- budget revisions when the cumulative transfers among direct cost categories exceed 10% of the total Federal and non-Federal funds authorized by the Grants Officer and the Federal share is greater than $100,000;
- inclusion of costs requiring prior approval, as directed by the OMB Cost Principles; and
- under non-construction projects: contracting for, sub-granting, or otherwise obtaining the services of a third-party to perform activities central to the purpose of the award.

Examples of when a letter is acceptable for documenting change in the award include:

- transfer of funds between direct and indirect cost categories;
- foreign travel requiring approval under the Fly America Act;
- changes in the federal program officer or grants administration officials; and
- notification to recipients of compliance with special award conditions.

E. Project Monitoring.

The purpose of project monitoring is to ensure that the terms and conditions of awards are fulfilled. Project monitoring shall be the joint responsibility of the Grants Officer, Program Officer, award recipient, and/or their designees. Monitoring may take the form of site visits, written and/or oral reports, meetings, or any other form of communication deemed appropriate by the Grants Officer for keeping apprised of project progress. See 15 CFR §§ 14.51-52 and 15 CFR §§ 24.40-41. Grants Officers and Program Officers may request audit assistance from the OIG in fulfilling their monitoring responsibilities. Allegations of fraud, waste, and abuse may also be referred to the OIG or made anonymously through the OIG Hotline at 1-800-424-5197.

F. Recipient Responsibilities.

Recipients of DOC financial assistance awards are responsible for achieving the scope of work and other activities delineated in the proposal as incorporated into their awards, and any DOC-approved amendments thereto. Recipients are also responsible for ensuring that they comply with all of the terms and conditions of their awards and with the provisions made as part of the award including, but not limited to, exercising appropriate financial management, accounting, and control over award funds and other assets; and reporting to the Grants Officer and Program Officer as required under the terms and conditions of their award.

11. ENFORCEMENT

A. Overview.

The Grants Officer, in consultation with the Program Office, is authorized to take appropriate actions if recipients fail to meet their obligations under awards. Proposed suspensions and terminations must be reviewed by FALD prior to execution. Every grant and cooperative agreement contains a provision for suspension and/or termination of the award for deficient project performance, poor financial management, non-payment of accounts receivable, and/or other non-compliance or deficiency problems. Suspension or termination of an individual award is not an action covered by the provisions of 2 CFR Part 1326, "Nonprocurement Debarment and Suspension."

B. Enforcement.

Enforcement actions may include, but are not limited to, discussions of corrective actions needed, written notice delineating needed actions; pre-enforcement warnings; imposition of high-risk special award conditions; suspension of the award, suspension of payment, or both; termination of the award; or debarment and suspension of the recipient pursuant to 2 CFR Part 1326. See 15 CFR § 14.62 or 24.43, as applicable.

1. Pre-Enforcement Actions. If a violation of an award is not material, discussions with the recipient of corrective actions needed or a written notice delineating needed actions may be sufficient to resolve the situation. Discussions or written notices should identify the problem and establish a time frame for the recipient to take corrective action. If the recipient fails to respond or implement corrective action, a pre-enforcement warning, which identifies the problem and the expected time frame for the recipient to resolve the matter, may be appropriate. A warning should also include the actions the operating unit intends to take if the problem is not corrected promptly.

2. High-Risk Special Award Conditions. If a recipient materially fails to comply with the terms and conditions of an award, the Grants Officer may impose high-risk special award conditions pursuant to 15 CFR § 14.14 or 24.12. Such special conditions may include placing the recipient on reimbursement only, or other requirements unique to the circumstances at hand. The recipient must be notified in writing of the high-risk special award conditions and informed of corrective actions necessary to remove the restrictions in accordance with 15 CFR §§ 14.14 and 24.12.

3. Suspension of Payments. Suspension of payments is an enforcement action available to the Grants Officer when he/she determines it is necessary to temporarily withhold payments of funds pending correction of identified deficiencies by the recipient or more severe enforcement action by the Grants Officer. Such action may be carried out by suspending the Recipient's access to the Department of Treasury's Automated Standard Application for Payment (ASAP) System, when the terms of the award provide for payments to the recipient through ASAP. The imposition of a suspension of payments does not halt activities under an award, and the recipient may continue to incur costs during the suspension of payments. Only the Grants Officer is authorized to suspend payments under an award or lift the suspension once it is imposed. The recipient must be notified of the suspension in writing. At a minimum, the notice must be sent by certified mail or electronically, and must state that the Department is imposing suspension of payments, the reason(s) why, and what corrective action the recipient must take in order to remedy the situation. If immediate action is not necessary to protect the

government's interest, the Grants Officer should provide 30 days notice, informing the recipient that, unless information is received within the 30 days establishing compliance by the recipient with the requested remedial actions, the Department will proceed with the suspension of payments. A suspension of payments may be imposed regardless of whether the recipient has submitted any pending payment requests. If specified corrective actions are not taken, the Grants Officer may, after considering the best interests of the government, take more severe enforcement action, including termination of the award.

4. Suspension of Award. Suspension of an award is an enforcement action available to the Grants Officer when he/she determines that circumstances under an award warrant temporarily stopping all activities under an award, including making payments to the recipient, pending the recipient taking corrective actions as specified by the Grants Officer. Such action may be carried out by suspending the Recipient's access to the Department of Treasury's ASAP System, when the terms of the award provide for payments to the recipient through ASAP. All activities under an award must cease and no costs may be incurred by the recipient during the suspension. Only the Grants Officer is authorized to suspend an award or lift a suspension once it is imposed. Suspension of an award must be documented in writing and included in the official award file. The recipient must be notified of the suspension in writing. At a minimum, the notice must be sent by certified mail or electronically, must state that the Department is imposing suspension of the award, the reason why, and what the recipient can do to remedy the situation. If immediate action is not necessary to protect the government's interest, the Grants Officer should provide 30 days notice, informing the recipient that, unless information is received within the 30 days establishing compliance by the recipient with the requested remedial actions, the Department will proceed with the suspension of the award. If specified corrective actions are not taken, the Grants Officer may, after considering the best interests of the government, take more severe enforcement action, including termination of the award. Suspension of an award may result in a no-cost extension of the award period to compensate for the work that was not conducted on the project during the suspension.

5. Termination for Cause. The Grants Officer may terminate any DOC award for material noncompliance. Material noncompliance includes, but is not limited to, violation of the terms and conditions of the award; failure to perform award activities in a satisfactory manner; improper management or use of award funds; or fraud, waste, abuse, mismanagement, or criminal activity. All termination for cause actions must be documented in the official award file in writing. The recipient must be notified of the termination action in writing using the same minimum requirements listed under a suspension in Paragraph 4., above, if a suspension did not precede the termination action. See 15 CFR § 14.61(a)(2) and (3) or 15 CFR § 24.43, as applicable.

C. Concurrent Actions.

Occasionally, when considering an administrative enforcement action, the Grants Officer may discover or be aware that other actions are concurrently ongoing or are about to be initiated against a recipient and/or its officers or employees. Such other actions may include OIG audits and/or investigations, and criminal or civil investigations/prosecutions by the Department of Justice. In such instances, it is important to coordinate, to the extent possible, any proposed administrative enforcement action with the authorities pursuing the other actions, in order to avoid any adverse impact on those other actions. Accordingly, when the Grants Officer is proposing enforcement action requiring FALD review and an opportunity to comment (suspensions and terminations), or requiring FALD clearance (proposed debarments and suspensions under 2 CFR part 1326), FALD must be informed

about the other actions, so that it can assist, if necessary, in the proper coordination with the other authorities. In addition, FALD must be informed of any other actions when the Grants Officer requests FALD's review of lesser administrative enforcement actions.

1. Termination for Convenience. In financial assistance, the Federal Government may not terminate an award unilaterally for the convenience of the government. However, an award may be terminated under the following conditions:

(a) By the Grants Officer with the consent of the recipient, in which case the two parties shall agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated; or

(b) By the recipient upon sending to the Grants Officer 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 Grants Officer determines in the case of partial termination that the reduced or modified portion of the grant will not accomplish the purposes for which the grant was made, it may terminate the grant in its entirety.

All termination actions must be documented in the official award file in writing.

2. Debarment and Suspension of a Recipient. Debarment and suspension of a recipient are actions taken pursuant to 2 CFR Part 1326, which implements EO's 12549 and 12689. The actions are intended to debar or suspend a recipient organization from participating in any Federal program, government-wide. Debarment and suspension are imposed, not as punishments, but to protect the interests of the government. The integrity or present responsibility of an applicant or recipient is at issue in a debarment or suspension, and such action is imposed only in egregious circumstances; e.g., when a recipient or applicant has been indicted and/or convicted of a criminal offense. All of the regulatory requirements of 2 CFR Part 1326 must be met before a recipient organization can be debarred or suspended from participation in Federal programs. This action must be distinguished from suspension of an individual award by a Grants Officer as discussed above. The FALD shall review all proposed debarments and suspensions under 2 CFR Part 1326.

12. AWARD CLOSE-OUT

An award expires at midnight local time for the recipient on the date which is listed on the last approved amendment (CD-451) as the "Extend Work Completion Date To" date or on the original Financial Assistance Award document (CD-450) as the "Award Period." Immediately following the expiration of an award, steps must be taken to ensure that activity is complete and that DOC and the recipient have met all requirements imposed by applicable laws, regulations, OMB circulars, and award terms and conditions. General procedures for award close-out are contained in 15 CFR § 14.71 and 15 CFR § 24.50.

A. Responsibilities.

Proper award close-out is required for all DOC financial assistance awards.

1. The Grants Officer has overall responsibility for ensuring that the award is properly closed-out and the necessary documentation is included in the official award file. Once all documentation has been received and no further action is required, the Grants Officer shall notify the recipient in writing, with a copy of the notification to the Program Officer, that the grant has been satisfactorily closed.

2. The Grants Officer or designee is responsible for notifying the recipient when the award is close to completion, and for reviewing and evaluating the final financial, performance, property, and patent reports, as applicable.

3. When applicable, the Grants Officer will provide the recipient with instructions for disposition of property loaned to the recipient by the Federal Government or purchased by the recipient with grant funds.

4. Award closeout shall be completed no later than 180 days subsequent to the expiration date of the award.

B. Unobligated Funds.

1. If at the completion of an award period, the recipient has an unobligated balance of funds on hand, those funds shall be returned to the Federal Government immediately. If the funds are not returned by the recipient in a timely manner, an account receivable may be established and billed to the recipient. Interest, penalties, and administrative charges shall be assessed, as appropriate.

2. Recipients with outstanding accounts receivable established (e.g., to collect unobligated funds) are subject to debt collection procedures at Chapter 14, Section C., of this Manual.

C. Deobligation of Funds.

Within ninety (90) calendar days of receipt of the final SF-425, "Federal Financial Report," showing no unliquidated obligations, the Grants Officer shall notify the Finance/Accounting Officer to deobligate the unobligated balance of funds not disbursed to the recipient. No funds will be deobligated unless requested by the Grants Officer.

D. Retention of Records.

1. Generally, a recipient is required to retain records relating to a particular grant for three (3) years from the date of submission of the accepted final financial report. In cases where litigation, claim or an audit is initiated prior to expiration of the three-year period, records must be retained until completion of the action and resolution of any issues associated with it or the end of the three-year retention period, whichever is later. (See 15 CFR § 14.53 or 15 CFR § 24.42 for specific records retention requirements.)

2. In cases where a recipient will no longer be in operation after a grant has been completed, the operating unit shall require the recipient to:

   a. Identify where records pertaining to the grant project will be located for the required three (3) year retention period; and

   b. Provide appropriate assurances of government access thereto.

13. AUDITS

A. Audit Requirements.

OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations," implements the Single Audit Act Amendments of 1996, establishing uniform audit requirements for non-Federal entities that administer Federal awards. To the extent that audits performed in accordance with OMB Circular A-133 meet DOC needs, DOC shall rely upon and use such audits. In accordance with 15 C.F.R. § 14.26 (c) and (d), for-profit hospitals, commercial, and other organizations not covered by the audit provisions of OMB Circular A-133 shall be subject to the audit requirements as stipulated in the award or sub-award document. State, local government, and non-profit recipients that expend less than $500,000 annually in Federal awards are exempt from Federal audit requirements but must follow the guidance in OMB Circular A-133 § _.200 (d), unless a program-specific audit is required by a special award condition and funded by the award.

1. Organization-Wide Audits. Organization-wide audits shall be performed in accordance with the Single Audit Act Amendments of 1996, as implemented by OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations." Recipients that are subject to OMB Circular A-133 and that expend $500,000 or more annually in Federal awards shall have an organization-wide audit performed in accordance with OMB Circular A-133 § 500 except when they qualify and elect to have a program-specific audit performed in accordance with OMB Circular A-133 § _.235. Organization-wide audits will generally be conducted annually.

2. Program-Specific Audits. Program-specific audits are allowable under OMB Circular A-133 in certain circumstances in lieu of the organization-wide audit. Recipients expending $500,000 or more in a year under only one Federal program under which the statutes, regulations, or terms of the award do not require a financial statement audit, may elect to have a program-specific audit conducted in accordance with OMB Circular A-133 § _.235. A program-specific audit may not be conducted for research and development unless all of the Federal awards expended were received from the same operating unit, or the same operating unit and the same pass-through entity, and the Grants Officer or appropriate representative of the pass-through entity in the case of a subrecipient, approves in advance a program-specific audit. Program-specific audits will be conducted annually.

3. Submission of Audit Report and Data Collection Form.

a. Recipients having audits conducted in accordance with OMB Circular A-133 shall submit to the Federal Audit Clearinghouse:

(1) The data collection form (Form SF-SAC) prescribed by OMB Circular A-133, § _.320(b); and

(2) The audit reporting package prescribed by OMB Circular A-133, § 320(c).

b. The Form SF-SAC and the Single Audit Reporting packages for fiscal periods ending on or after January 1, 2008 must be submitted online. Go to the Federal Audit Clearinghouse website: http://harvester.census.gov/fac/collect/ddeindex.html and create your online report ID:

1. Click on "Enter New Form"
2. Complete the Form SF-SAC
3. Upload the Single Audit
4. Certify the Submission
5. Click "Submit."

For periods prior to January 1, 2008, the address for the Federal Audit Clearinghouse is:

Federal Audit Clearinghouse
Bureau of the Census
1201 E. 10th Street
Jeffersonville, Indiana 47132

B. Other Audits.

An audit of an award may be conducted at any time as indicated in the DOC ST&Cs. The following is a list of other audits that may be required by DOC.

1. Audits of Commercial Organizations, Sole Proprietors, and Individuals. A for-profit organization, sole proprietor, or individual receiving a DOC award must have a program-specific audit performed where the federal share amount awarded is $500,000 or more over the duration of the project period, or as specified in the award. The DOC award may include a line item in the budget for the cost of the audit. If DOC does not have a program-specific audit guide available for the program, the auditor should follow Generally Accepted Government Auditing Standards and the requirements for a program-specific audit as described in OMB Circular A-133 § 235. A copy of the program-specific audit shall be submitted to the Grants Officer at the address specified in the award document and to the DOC OIG at the following address:

Office of Inspector General
U. S. Department of Commerce
401 West Peachtree Street, N.W., Suite 2742
Atlanta, Georgia 30308

2. Audit Conducted by the OIG. When an audit is conducted by the OIG, the OIG will usually make the arrangements for the audit, whether the audit is performed by the OIG personnel, an independent accountant under contract with DOC, or any other Federal, state, or local audit entity.

3. Audit Required by the Award. When an audit is required under a special award condition, the recipient will usually make the arrangements for the audit. The audit shall be performed in accordance with a program-specific audit guide, if one is available for that program, or Generally Accepted Government Audit Standards and the requirements for a program-specific audit as described in OMB Circular A-133 § _.235. The recipient shall submit copies of program-specific audits in accordance with the guidance in the program-specific audit guide. If no guide is available, a copy of the audit shall be

submitted to the Grants Officer and to the OIG at NonFederalAudits@OIG.DOC.GOV or if e-mail is unavailable, submission to the OIG can be made at the following address:

Office of Inspector General
U. S. Department of Commerce
401 West Peachtree Street, N.W., Suite 2742
Atlanta, Georgia 30308

C. OIG Access to Recipient Records.

Under the Inspector General Act of 1978, as amended, 5 U.S.C. App. 3, § 1 *et seq.*, an audit of the award may be conducted at any time. The Inspector General of the DOC, or any of his or her duly authorized representatives, shall have access to any pertinent books, documents, papers and records of the recipient, whether written, printed, recorded, produced or reproduced by any mechanical, magnetic or other process or medium, in order to make audits, inspections, excerpts, transcripts or other examinations as authorized by law.

D. Audit Resolution.

1. In accordance with DAO 213-5, Department and operating unit personnel shall act promptly to resolve both the financial and nonfinancial issues raised in an audit report. Comments, arguments, and evidence (if any) submitted by the auditee and the operating unit shall be considered in resolving these issues. A DOC decision on the resolution of audit findings and recommendations will be made within 180 days of the issuance of an OIG audit report or OIG transmittal letter including findings and questioned costs reported by an independent accountant in accordance with the procedures and within the specified timeframes identified in DAO 213-5.

2. The audit action official (as defined in DAO 213-5) shall issue the Audit Resolution Determination. The Audit Resolution Determination will be maintained in the official grant file and a copy will be forwarded to the Program Officer.

3. Recipients are responsible for the collection of audit-related debts from their subrecipients where an audit has determined funds are owed. This does not relieve the recipient of liability for the debt.

4. All disputes arising from audit resolution shall be decided in accordance with the appeal procedures and specified time frames outlined in DAO 213-5, and DOC's "Policies and Procedures for Resolution of Audit-Related Debts," 54 Fed. Reg. 4053 (January 27, 1989). The appeal procedure is the last opportunity for auditees to provide evidence to support their contentions. The DOC will not accept any submission from a recipient regarding an appeal after the established deadline, unless requested by the Grants Officer, the OIG, or the OGC. After the Department renders a decision on an appeal, there are no other administrative appeals available within DOC.

5. An audit of the award may result in the disallowance of costs incurred by the recipient and the establishment of a debt (account receivable) due DOC.

E. Audit Implementation.

Audit follow-up and implementation shall be conducted in accordance with the requirements of OMB Circular A-50, "Audit Follow-up" and the Inspector General Act of 1978, as amended, 5 U.S.C. App. 3, § 1 *et seq.*, as implemented by the Department by DAO 213-5.

14. CREDIT AND DEBT MANAGEMENT

A. Establishment of a Debt.

Grant and Cooperative Agreement-related debts to the Department of Commerce are generally established as a result of an audit resolution. However, a recipient may be billed for other reasons, such as retention of excess cash on hand or failure to meet cost sharing required by the award document. When a recipient is to be billed, the Grants Officer will provide proper notification to the recipient and will request that the appropriate accounting office bill the recipient.

B. Debt Collection.

1. In accordance with the DOC credit and debt management procedures, accounts receivable shall be promptly established, billed, and collected. The authorities listed below must be adhered to in the collection of debts related to Grants and Cooperative Agreements:

a. The Debt Collection Act of 1982, as amended (31 U.S.C. § 3701 *et seq*.) (DCA) and the Federal Claims Collection Standards (31 CFR §§ 900-904);

b. The DOC debt collection regulations 15 CFR Part 19 "Commerce Debt Collection";

c. The DOC Credit and Debt Management Operating Standards and Procedures Handbook (Debt Management Handbook) (http://www.osec.doc.gov/ofm/credit/cover.htm);

d. The Treasury Financial Manual (TFM), Volume 1, Part 6, Chapter 8000 "Cash Management";

e. OMB Circular A-129 Revised "Policies for Federal Credit Programs and Non-Tax Receivables"; and

f. Any other relevant laws, regulations, OMB circulars, and DOC policies.

2. Both the audit resolution process and the debt collection process independently require that debtors be given notice concerning the debt and an opportunity for review. (See, for example, DAO 213-5 and 15 CFR Part 19.4). All reasonable efforts should be made to satisfy the requirements of both in a single process. In particular, the audit resolution determination should, wherever reasonably possible, also serve as a demand and notice of intent letter as required by the DCA, as amended. (See Exhibit A and Debt Management Handbook, Chapter 8).

3. Delinquent debts shall be assessed the following charges (see, 31 CFR § 901.9, 15 CFR Part 19.5, Handbook Chapter 8, and TFM, Volume 1, Part 6, Chapter 8000):

a. An interest charge on the amount due shall be applied and collected. Interest will accrue on the principle, or any portion thereof, owing and unpaid from the date the debt is established until it is paid in full. However, interest will automatically be waived on any portion of the principal that is paid within 30 days. The minimum annual rate of interest to be charged is the Department of the Treasury's (Treasury) Current Value of Funds. This rate is published annually in the *Federal Register*

by Treasury, and is available on the website of Treasury's Financial Management Service. The assessed rate shall remain fixed for the duration of the indebtedness.

b. A penalty charge, not to exceed six (6) percent a year, shall be added to delinquent debts. The charge will accrue on the principal, or any portion thereof, owing and unpaid from the date of delinquency, 31 days after the date the debt is established, until it is paid in full. However, the charge will automatically be waived on any portion of the principal paid within 90 days of the date of delinquency.

c. An administrative charge shall be applied to cover processing and handling of the amount due.

d. For specific information on waiving late charges, whether additional interest, penalty charges, or administrative charges, refer to Chapter 8 of the Debt Management Handbook.

4. The Grants Officer shall advise the recipient that payment of debts cannot be from funds received from other Federal programs or result in a reduced level of program activity.

5. The Debt Collection Improvement Act of 1996 (DCIA) amended the Debt Collection Act of 1982 to require Federal agencies to refer debts delinquent for 180 days or more to Treasury for debt collection action. The DCIA also established Treasury's Financial Management Service as the Federal Government's debt collection center. Treasury has chosen to implement the DCIA through an expanded Treasury Offset Program (TOP) and cross-servicing (debt collection) technique. DOC has signed a cross-servicing and TOP agreement with Treasury. Debts delinquent for less than 180 days may be transferred for cross-servicing at the election of DOC. The appropriate official must comply with notification requirements contained in 15 CFR Part 19, "Commerce Debt Collection," before debts are transferred to Treasury for action. See also 31 CFR § 901, "Standards for the Administrative Collections of Claims."

C. Impact of Delinquent Federal Debts on Award Eligibility

1. It is the policy of DOC that no award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until:

a. The delinquent account is paid in full;

b. A negotiated repayment schedule is established and at least one payment is received; or

c. Other arrangements satisfactory to DOC are made.

2. Once an outstanding receivable becomes a delinquent Federal debt, no further awards to the recipient may be considered until the debt is paid, except in circumstances cited in subparagraph 1, above, and discussed in subparagraph 4, below. This includes debts that have been written off, but not yet closed out. Although a delinquent debt becomes inactive once it is written off and the operating unit takes no further action to collect it, the debt is still owed to the Federal Government. If, however, the debt is then closed out by the Finance/Accounting Officer, no further collection action may be taken after the debt is reported to the IRS on Form 1099-G "Certain Government Payments" as income to the debtor.

3. Federal policy as established under OMB Circular A-129, "Managing Federal Credit Programs," requires the aggressive but fair management of Federal receivables. It is the general policy of DOC that delinquent outstanding receivables be repaid in full in a lump sum. Mitigating circumstances may exist that justify issuance of an award outside the parameters of the policy if a repayment schedule is negotiated and approved and one payment received, or other arrangements satisfactory to DOC are made before an award is issued. Issuance of an award to a recipient who has an outstanding debt must be in accordance with the guidance provided below. The steps taken to safeguard the Federal Government's interests until repayment is made must be noted in the official award file.

a. In the event that a recipient is unable to repay the delinquent debt in one lump sum, a repayment schedule may be formally negotiated and entered into by the operating unit and the recipient. As long as the recipient is making payments in accordance with the repayment schedule, a new award may be made. Recipients must be placed on a reimbursement payment method until the debt is paid, unless the Grants Officer authorizes other arrangements.

(1) The Finance/Accounting Officer shall notify the Grants Officer and recipient when payment on a repayment schedule is ten (10) calendar days delinquent.

(2) The Grants Officer may suspend payments under any current award(s) if payment on a repayment schedule is fourteen (14) calendar days delinquent. The Grants Officer must suspend the current award(s) when payment is thirty (30) calendar days delinquent unless the Grants Officer determines and sets forth in writing the reasons that it is not in the best interest of the Federal Government to do so. This written determination shall become part of the official award file. Before sending the request to suspend an award to the Finance/Accounting Officer and the notification of suspension to the recipient, the Grants Officer must verify with the Finance/Accounting Officer that the repayment schedule remains delinquent.

(3) Suspended awards may be reactivated when payment on the repayment schedule becomes current.

(4) The Grants Officer may terminate a suspended award based on nonpayment of the debt.

b. Other extraordinary circumstances may exist which may warrant proceeding with an award prior to repayment of a delinquent debt. Circumstances that merit such action include:

(1) The recipient has acknowledged that it owes the debt, and has made satisfactory arrangements to repay; or

(2) The debt is reported as unpaid as a result of an error.

(3) When a determination is made that:

(a) There may be sufficient justification for delaying repayment of the debt that merits further investigation; and

(b) Not proceeding with the award will frustrate successful achievement of programmatic goals.

The Program Officer shall prepare and sign a written justification for the concurrence of the Grants Officer, who shall maintain the documentation in the official award file. The justification must have the concurrence of the head of the operating unit and be included in the official award file.

D. Exceptions.

The procedures set forth in this chapter are applicable to all operating units except those that are not subject to the disposition of claims under the DCIA or its implementing regulations. Where an operating unit is not required by law to follow DCIA procedures, it must develop and follow its own alternative procedures, but to the extent feasible, it also must comply with and employ the guidelines set out in this chapter.

Exhibit A – Sample Notice and Demand Letter/Audit Resolution Determination

CERTIFIED MAIL – RETURN RECEIPT REQUESTED [Optional]

[Date 60 days prior to any further debt collection action]

[Name of Recipient/Debtor]
[Address Line 1]
[Address Line 2]
[Add "Attn:" and Name & Title of General Partner, Corporate President, or State Governmental Official, as appropriate, for Organizational Recipients/Debtors.]

RE: [Name of Recipient/Debtor] ("Recipient")
Audit Resolution Determination ("Letter")
Financial Assistance Agreement Number:_____ ("Agreement")
Audit Report Number:_____ ("Audit Report")

Dear _____:

Recipient entered into the Agreement with the U. S. Department of Commerce, [Operating Unit] ("Agency"). An audit has been performed relating to the Agreement, the Audit Report prepared, and Recipient provided a copy of the Audit Report. The Agency has reviewed the Audit Report (which includes Recipient comments, if any), determined that Recipient owes the Agency a refund, and established a debt in the amount of that refund. A summary of the financial and non-financial findings in the Audit Report, and the Agency's resolution of them, is enclosed as Exhibit A. [See Instructions for Content.]

Debt and Demand for Payment

There is currently owing and unpaid by the Recipient to the Agency a debt, described above, in the amount of $_____ principal, plus interest thereon at the rate of ____ % per annum. Demand is hereby made for payment in full within 60 days of the date of this Letter ("Due Date"). The amount demanded should be paid in one lump sum by the Due Date in accordance with the bill enclosed as Exhibit B. [Obtain bill from agency setting up the account receivable. Assure that the content of the bill does not conflict with the terms of this Letter.]

Under the Debt Collection Act of 1982, as amended, 31 U.S.C. § 3701 *et seq*., and 15 CFR § 19, interest will accrue on the principal, or any portion thereof, owing and unpaid from the date of this Audit Resolution Determination until the debt is paid in full. However, interest will automatically be waived on any portion of the principal that is paid within 30 days. The rate of interest that Recipient will be assessed is specified above and was determined in accordance with 31 U.S.C. § 3717.

The debt will be delinquent if not paid in full by the Due Date. If the debt becomes delinquent, interest will continue to accrue on the principal balance remaining due and unpaid at that time, and Recipient will also be assessed both a penalty charge and, to cover the cost of processing and handling the delinquent debt, an administrative charge.

The penalty charge will accrue on the principle, or any portion thereof, owing and unpaid from the date of delinquency, 31 days after the date of this Audit Resolution Determination, until the debt is paid in full. However, the penalty charge will automatically be waived on any portion of the principal paid within 90 days of the date of delinquency. The penalty charge is ___ % per annum [maximum of 6.0%] and the administrative charge is $_____ [currently $25.00]. Both charges are in accordance with 31 U.S.C. § 3717.

Interest and penalty charges will continue to be added until the entire debt has been paid in full. This includes payment of all principal, interest, and penalty and administrative charges. Keep in mind that any sums received will be applied first to administrative and penalty charges, then to interest, and lastly to principal.

Collection Actions

The Agency is entitled to take all appropriate steps to collect delinquent debts and will do so in this case if the debt is not paid as demanded above. Those steps may include:

- referring the debt to the U.S. Department of the Treasury for offset of Recipient's income tax refunds, Recipient's contractor/vendor payments and any other Federal payments, including but not necessarily limited to certain benefit payments and loans to Recipient, that are not exempt from offset;
- referring the debt to a private collection agency;
- reporting the debt to a credit bureau;
- referring the debt to the U.S. Department of Justice for litigation;
- reporting the debt, if discharged, to the Internal Revenue Service as potential taxable income;
- referring the debt to the U.S. Department of the Treasury for any of the above described actions, which referral is required when the debt has been delinquent for 180 days; and
- performing administrative offset or common law set-off of the debt against any payments or credits that may be owned to Recipient by the Agency.

Also, failure to pay the debt by the Due Date could result in payments being withheld under any current Agency awards to Recipient and in the termination of such awards. In addition, Recipient will become ineligible for Federal loans (except disaster loans), loan insurance or guaranties. Persons controlled by [or controlling] [Add for Organizational Recipients]. Recipient may be similarly ineligible. Also, it is U. S. Department of Commerce policy that no award of Federal funds shall be made to a grant or cooperative agreement applicant who has an outstanding delinquent debt to the Department. [Finally, the Agency may deny, suspend or revoke licenses, permits, or other privileges for any inexcusable or willful failure of Recipient to pay the debt.] [Add where agency has such authority.]

The Agency believes that the payment of this debt is entitled to priority treatment in accordance with 31 U.S.C. § 3713. Failure to satisfy the Agency's claims before paying the claims of other creditors may result in the personal liability of one or more of Recipient's officers, employees or other representatives for this debt.

Inspection and Copying of Documents

Recipient has the right to inspect and copy the agency records related to the debt as determined by the responsible agency official(s). However, with respect to this debt, the responsible agency official(s) has (have) determined that all documents have been previously provided to Recipient or are being provided herewith. These documents include the applicable Financial Assistance Agreement, the Audit Report, and this Audit Resolution Determination. If Recipient wishes additional copies, the Agency point of contact identified at the end of this letter will, upon request, explain the procedures for inspecting and copying the originals. [If this is a special case with additional or different documents, refer to and enclose such records as are needed to support the proper establishment of the debt. Consult with legal counsel respecting such cases.]

[Waiver of Indebtedness and] [Insert where applicable.] Repayment Agreement

[Recipient has the right to request, pursuant to _____, a waiver of all or a portion of the indebtedness. [Add applicable statutory and regulatory authorities. Contact legal counsel for advice in this regard.] If Recipient wishes to exercise this right, Recipient must do so within 60 days of the date of this Audit Resolution Determination or, if Recipient files a Request for Reconsideration, discussed below, then together with that Request. These will be Recipient's only opportunities to do so.] [Insert where applicable.]

Recipient also has the right to request to enter into a written repayment agreement with the responsible Agency official(s) to repay the debt, including interest, penalties and administrative charges determined by the Agency. If Recipient wishes to exercise this right, Recipient must do so within 60 days of the date of this Letter or, if Recipient files a Request for Reconsideration, discussed below, then within 10 days of the Agency issuing to Recipient a decision on such Request ("Reconsideration Determination"). These will be Recipient's only opportunities to do so.

However, keep in mind that while the Agency may forego one or more of the aforementioned debt collection activities pending the issuance of the Agency's decision(s) on Recipient's request(s), interest and, should the debt become delinquent, penalty and administrative charges, will continue to accrue unless and until the debt is paid in full.

[To request a waiver, Recipient must submit an explanation of why, under the pertinent facts and the applicable legal authority, Recipient should be granted a waiver of all or part of the indebtedness. Recipient must include any and all supporting evidence but may refer to evidence previously submitted in lieu of resubmitting such evidence. This submission must be timely made to the Agency at the address specified below for the filing of a Request for Reconsideration. The Agency will consider all evidence submitted in a timely manner and, in due course, issue a Reconsideration Determination to Recipient and, also, make any retroactive adjustments to the debt and refund any overpayment as may be appropriate.] [Insert where applicable.]

To request to enter into a repayment agreement, Recipient must complete and return the Financial Statement form [U.S. Department of Justice OBD-500 or OBD-500C for individual or corporate recipients, respectively] [Insert appropriate form designation.], enclosed as Exhibit C [D if special documents related to the debt are attached as discussed above.], together with a proposed repayment schedule or, if Recipient is unable to pay the full amount of the debt, a settlement proposal in lieu of the schedule. This submission must be timely made to the Agency at the address specified below for filing a

Request for Reconsideration. The Agency will review all information and materials submitted in a timely manner and any obtained from other sources (e.g., credit reports), and, in due course, issue a Reconsideration Determination to Recipient.

Request for Reconsideration

Recipient has the right to request that the Agency reconsider this Audit Resolution Determination, including providing Recipient with a review of any indebtedness established ("Request for Reconsideration"). If Recipient wishes to exercise this right, Recipient must do so within 60 days of the date of this Audit Resolution Determination. This will be Recipient's only opportunity to do so.

However, keep in mind that while the Agency may forego one or more of the aforementioned debt collection activities pending the issuance of the Agency's Reconsideration Determination, interest and, should the debt become delinquent, penalty and administrative charges will continue to accrue unless and until the debt is paid in full. The exception would be if the Agency and Recipient previously entered into a written repayment agreement, in which case that agreement would apply.

To request reconsideration, Recipient must file a Request for Reconsideration containing an explanation of why, under the pertinent facts and the applicable legal authority, Recipient disagrees with this Audit Resolution Determination. Recipient must include any and all supporting evidence but may refer to evidence previously submitted in lieu of resubmitting such evidence. This submission must be timely made to the address specified below. The Agency will consider all evidence submitted in a timely manner and, in due course, issue to Recipient a Reconsideration Determination and, also, make any retroactive adjustments to the debt and refund any overpayment as may be appropriate.

The original and one copy of a Request for Reconsideration must be timely filed with the Agency at:

US Department of Commerce
[Operating Unit]
1401 Constitution Avenue, NW, Room _____
Washington, DC 20230
Attn: [Agency Point of Contact]

Contemporaneously with filing such a Request, submit one copy thereof to:

US Department of Commerce
Office of the Inspector General
Assistant Inspector General for Auditing
1401 Constitution Avenue, NW, Room 7721, MS H7721
Washington, DC 20230
Attn: [Name and Title of Appropriate OIG Official]

[Other Rights] [Add when applicable.]

[Recipient's spouse may claim his or her share of a joint income tax refund by filing Form 8379 with the Internal Revenue Service provided that the spouse is not also delinquent on a debt to the United States.] [Add for Individual Recipients.]

[If there are any rights and remedies available to Recipient under programmatic statutory or regulatory authority under which the debt arose, state what they are and how they may be exercised. Consult with legal counsel respecting such provisions.]

Civil and Criminal Penalties

If you knowingly make or provide any false or frivolous statements, representations or evidence, you may be liable for civil penalties under the False Claims Act, as amended, 31 U.S.C. § 3729, *et seq*., or other applicable law; and/or subject to criminal penalties under 18 U.S.C. §§ 286, 287, 1001 and 1002, or other applicable law.

Agency Point of Contact

Please direct any questions regarding this matter and, also, any notice that Recipient has filed bankruptcy, to _____, the Agency point of contact, at the address for filing a Request for Reconsideration, above, or at (___) ___-____.

Sincerely,

_____
[Name and Title of Responsible Official]

Enclosures

cc: _____, Assistant Inspector General for Auditing

15. PUBLIC POLICY REQUIREMENTS

A. Overview.

Recipients shall administer all DOC financial assistance awards will be conducted by the recipient in accordance with applicable statutes and regulations. DOC has the responsibility to enforce recipient compliance with public policy requirements as a condition of receiving Federal assistance funds. The requirements set out in this chapter are those based on social, economic, or other objectives or considerations that may be attached to the expenditure of Federal funds by recipients and subrecipients.

B. General Requirements.

The following is a list of requirements that generally apply to all DOC awards:

1. Provide DOC, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award. See 15 CFR §14.53(e) or 15 CFR §24.42(e), as applicable.

2. Maintain written standards of conduct to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain. See 15 CFR. §§ 14.42 or 24.36(b)(3), as applicable and Chapter 16, Section D., of this Manual.

3. Initiate and complete the work within the applicable time frame as set out in the award documentation.

4. Comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of the Office of Personnel Management Standards for a Merit System of Personnel Administration (5 CFR Part 900, Subpart F).

C. Nondiscrimination Requirements.

There are several Federal statutes, regulations, Executive Orders, and policies relating to nondiscrimination. No person in the United States shall, on the ground of race, color, national origin, handicap, religion, age, or sex, be excluded from participation in, denied the benefits of, or subject to discrimination under any program or activity receiving Federal financial assistance. These requirements include but are not limited to:

1. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d *et seq*.) and DOC implementing regulations published at 15 CFR Part 8, prohibiting discrimination on the grounds of race, color, or national origin under programs or activities receiving Federal financial assistance;

2. Title IX of the Education Amendments of 1972 (20 U.S.C. §§ 1681 *et seq*.) and implementing regulations at 15 CFR Part 8a, prohibiting discrimination on the basis of sex under federally assisted education programs or activities;

3. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §§ 794) and DOC implementing regulations published at 15 CFR Part 8b, prohibiting discrimination on the basis of handicap under any program or activity receiving or benefiting from Federal assistance, including the following requirements:

Revised ADA Standards for Accessible Design for Construction Awards: The U.S. Department of Justice has issued revised regulations implementing Title II of the Americans with Disabilities Act (ADA) (28 C.F.R. part 35; 75 FR 56164, as amended by 76 FR 13285) and Title III of the ADA (28 C.F.R. part 36; 75 FR 56164, as amended by 76 FR 13286). The revised regulations adopted new enforceable accessibility standards called the "2010 ADA Standards for Accessible Design" (2010 Standards). The 2010 Standards are an acceptable alternative to the Uniform Federal Accessibility Standards (UFAS). DOC deems compliance with the 2010 Standards to be an acceptable means of complying with the Section 504 accessibility requirements for new construction and alteration projects under 15 C.F.R. § 8b.18(c), as follows:

a. Public Recipients subject to Title II of the ADA may use either the 2010 Standards or UFAS where the physical construction or alternations commence on or after September 15, 2010 and before March 15, 2012 (see 28 C.F.R. § 35.151(c)(2)); and

b. Private Recipients subject to Title III of the ADA may use either the 2010 Standards or UFAS if the date when the last application for a building permit or permit extension is certified to be complete by a State, county, or local government (or, in those jurisdictions where the government does not certify completion of applications, if the date when the last application for a building permit or permit extension is received by the State, county, or local government) is on or after September 15, 2010 and before March 15, 2012, or if no permit is required, if the start of physical construction or alterations occurs on or after September 15, 2010 and before March 15, 2012 (see 28 C.F.R. § 36.406(a)(2)).

In all cases, once a recipient selects an applicable ADA accessibility standard (i.e., the 2010 Standards or UFAS), that standard must be applied to the entire facility.

4. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 *et seq*.) and DOC implementing regulations published at 15 CFR Part 20, prohibiting discrimination on the basis of age in programs or activities receiving Federal financial assistance;

5. The Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101 *et seq*.) prohibiting discrimination on the basis of disability under programs, activities, and services provided or made available by State and local governments or instrumentalities or agencies thereto, as well as public or private entities that provide public transportation;

6. Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 *et seq*.), as amended, relating to nondiscrimination in the sale, rental or financing of housing;

7. Parts II " Nondiscrimination in Employment by Government Contractors and Subcontractors" and III "Nondiscrimination Provisions in Federally Assisted Construction Contracts" of Executive Order 11246, September 24, 1965, "Equal Employment Opportunity" as amended by Executive Orders 11375, October 13, 1967, "Amending Executive Order Number 11246, relating to Equal Employment

Opportunity" and 12086, October 5, 1978, "Consolidation of Contract Compliance Functions for Equal Employment Opportunity" requiring Federally-assisted construction contracts to include the nondiscrimination provisions of §§ 202 and 203 of that Executive Order and Department of Labor regulations implementing Executive Order 11246, published at 41 CFR § 60-1.4(b).

8. Executive Order 13166, August 11, 2000, "Improving Access to Services for Persons with Limited English Proficiency," requiring Federal agencies to examine the services provided, identify any need for services to those with limited English proficiency (LEP), and develop and implement a system to provide those services so LEP persons can have meaningful access to them, and DOC policy guidance issued on March 24, 2003 (68 FR 14180) to Federal financial assistance recipients on the Title VI prohibition against national origin discrimination affecting Limited English Proficient (LEP) persons.

9. In recognition of the constitutionally-protected interest of religious organizations in making religiously-motivated employment decisions, Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*, expressly exempts religious organizations from the prohibition against discrimination on the basis of religion. See 42 U.S.C. § 2000e-1(a).

10. Any other applicable Federal non-discrimination requirements.

D. Environmental Requirements.

Environmental impacts must be considered by Federal decision makers in their decisions whether or not to (1) approve a proposal for Federal assistance; (2) approve the proposal with mitigation; or (3) approve a different proposal/grant having less adverse environmental impacts. Federal environmental laws require that the funding agency initiate an early planning process that considers potential impacts that projects funded with Federal assistance may have on the environment. The recipient and subrecipients must comply with all environmental standards, to include those prescribed under the following statutes and Executive Orders, and shall identify to the awarding agency any impact the award may have on the environment. In some cases, funds can be withheld by the grants Officer under a special award condition requiring the recipient to submit additional environmental compliance information sufficient to enable the DOC to make an assessment on any impacts that a project may have on the environment.

1. The National Environmental Policy Act of 1969 (42 U.S.C. §§ 4321 *et seq.*). Recipients of Federal assistance are required to identify to the awarding agency any impact an award will have on the quality of the human environment, and assist the agency in complying with the National Environmental Policy Act when the award activities remain subject to federal authority and control. Applicants for assistance may be requested to assist DOC in drafting an environmental assessment or environmental impact statement if DOC determines such documentation is required.

2. The National Historic Preservation Act (NHPA) (16 U.S.C. § 470 *et seq*.). Recipients of Federal funding are required to identify to the awarding agency any effects the award may have on properties included on or eligible for inclusion on the National Register of Historic Places. Recipients may also be requested to assist DOC in consulting with State or Tribal Historic Preservation Officers or other applicable interested parties necessary to identify, assess and resolve adverse effects to historic properties. Until such time as the appropriate NHPA consultations and documentation is complete, funds can be withheld by the Grants Officer under a special award condition requiring the recipient to fully comply with the requirement of the NHPA.

3. Executive Order 11988, May 24, 1977("Floodplain Management") and Executive Order 11990, May 24, 1977 ("Protection of Wetlands"). Recipients must identify proposed actions in Federally-defined floodplains and wetlands to enable the Department to make a determination as to whether there is an alternative to minimize any potential harm.

4. Clean Air Act (42 U.S.C. § 7401 *et seq.*), Federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq.*) (Clean Water Act), and Executive Order 11738 ("Providing for administration of the Clean Air Act and the Federal Water Pollution Control Act with respect to Federal contracts, grants or loans"). Recipients must comply with the provisions of the Clean Air Act (42 U.S.C. §§ 7401 *et seq.*), Clean Water Act (33 U.S.C. §§1251 *et seq.*), and Executive Order 11738. Recipients shall not use a facility placed by EPA on the Excluded Parties List System (EPLS) (http://www.sam.gov) in performing any award that is nonexempt under Subpart J of 2 CFR Part 1532.

5. The Flood Disaster Protection Act of 1973 (42 U.S.C. § 4002 *et seq.*). Flood insurance, when available, is required for Federally-assisted construction or acquisition in flood-prone areas.

6. The Endangered Species Act of 1973, as amended (16 U.S.C. § 1531 *et seq.*). Recipients must identify any impact or activities which may involve a threatened or endangered species. Federal agencies have the responsibility to ensure that no adverse effects to a protected species or habitat occur from actions under Federal assistance awards and conduct the required reviews under the Endangered Species Act, as applicable.

7. The Coastal Zone Management Act, as amended (16 U.S.C. § 1451 *et seq.*). Funded projects must be consistent with a coastal State's approved management program for the coastal zone.

8. The Coastal Barriers Resources Act (16 U.S.C. § 3501 *et seq.*). Restrictions are placed on Federal funding for actions within a Coastal Barrier System.

9. The Wild and Scenic Rivers Act, as amended (16 U.S.C. §§ 1271 *et seq.*). This Act applies to awards that may affect existing or proposed components of the National Wild and Scenic Rivers system.

10. The Safe Drinking Water Act of 1974, as amended (42 U.S.C. §§ 300f-j). This Act precludes Federal assistance for any project that the EPA determines may contaminate a sole-source aquifer so as to threaten public health.

11. The Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. §§ 6901 *et seq.*). This Act regulates the generation, transportation, treatment, and disposal of hazardous wastes. The Act also provides that recipients of Federal funds give preference in their procurement programs to the purchase of recycled products pursuant to EPA guidelines.

12. The Comprehensive Environmental Response, Compensation, and Liability Act (Superfund) (42 U.S.C. § 9601 *et seq*.) and the Community Environmental Response Facilitation Act (41 U.S.C. § 11001 *et seq*.). These requirements address responsibilities of hazardous substance releases, threatened releases, and environmental cleanup. There are also reporting and community involvement requirements designed to ensure disclosure of the release or disposal of regulated substances and cleanup of hazards to state and local emergency responders.

13. Executive Order 12898 ("Environmental Justice in Minority Populations and Low Income Populations"). Federal agencies are required to identify and address the disproportionately high and adverse human health or environmental effects of Federal programs, policies and activities on low income and minority populations.

E. Other Socioeconomic Requirements

1. Comply with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. §§ 4601 *et seq.*); and implementing regulations issued at 15 CFR Part 11, which provide for fair and equitable treatment of displaced persons or of persons whose property is acquired as a result of Federal or Federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

2. Assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended and the Advisory Council on Historic Preservation Guidelines (16 U.S.C. §§ 470 *et seq.*); the Executive Order and Historic Preservation Act of 1974, (16 U.S.C. §§ 469a-1 *et seq.*);, Executive Order 11593, May 13, 1971, "Protection and Enhancement of the Cultural Environment"; Executive Order 13006, May 21, 1996, "Locating Federal Facilities on Historic Properties in our Nation's Central Cities"; and Executive Order 13007, May 24, 1996, "Indian Sacred Sites."

3. Comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328), which limits the political activities of employees or officers of state or local governments whose principal employment activities are funded in whole or in part with Federal funds.

4. Comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7); the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. § 874); and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701 - 3708), regarding labor standards for Federally-assisted construction sub-agreements (wage guarantees).

5. Perform the required organization-wide or program-specific audits in accordance with the Single Audit Act of 1984 (Public Law 98-502, as amended by the Single Audit Act Amendments of 1996 (Pub. L. No. 104-156), and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

6. Comply with the provisions of Subpart C of 2 CFR Part 1326, "Governmentwide Debarment and Suspension (Nonprocurement)," which generally prohibit entities that have been debarred, suspended, or voluntarily excluded from participating in Federal nonprocurement transactions either through primary or lower tier covered transactions.

7. Comply with the provisions of the Drug-Free Workplace Act of 1988 (Public Law 100-690, Title V, Sec.5153, as amended by Public Law 105-85, Div. A, Title VIII, Sec. 809, as codified at 41 U.S.C. § 702) and DOC implementing regulations published at2 CFR Part 1329, "Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)," which require that the recipient take steps to provide a drug-free workplace.

8. Comply with the provisions of 31 U.S.C. §1352, and DOC implementing regulations published at 15 CFR Part 28, "New Restrictions on Lobbying." These provisions prohibit the use of Federal funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with the award and require the disclosure of the use of non-Federal funds for lobbying. The provisions of 15 CFR Part 28 apply to DOC grants and cooperative agreement awards exceeding $100,000. The recipient must submit a completed "Disclosure of Lobbying Activities" (Form SF-LLL) regarding the use of non-Federal funds for lobbying, including those received from subrecipients, contractors, and subcontractors, to the Grants Officer.

9. Comply with the provisions of the Fly America Act found at 49 U.S.C. § 40118. The implementing Federal Travel Regulations are published at 41 CFR §§ 301-10.131 through 301-10.143. The Fly America Act requires that Federal travelers and others performing U.S. Government-financed air travel use U.S. flag air carriers, to the extent that service by such carriers is available. Foreign air carriers may be used only in specific instances, such as when a U.S. flag air carrier is unavailable; use of U.S. flag air carrier service will not accomplish the agency's mission; or there is a bilateral or multilateral air transportation agreement that (1) the Federal government and the government of a foreign country are parties, and the U.S. Department of Transportation has determined meets the requirements of the Fly America Act (Multiple "Open Skies Agreements" currently in effect; visit the GSA website http://www.gsa.gov/portal/content/103191 for more information about the current bilateral and multilateral agreements.).

10. To the greatest extent practicable, recipients are encouraged to purchase American-made equipment and products with funding provided under DOC financial assistance awards.

11. Comply with Executive Order 13043, April 16, 1997, "Increasing Seat Belt Use in the United States," under which recipients should encourage employees and contractors to enforce on-the-job seat belt policies and programs when operating company-owned, rented, or personally-owned vehicles.

12. Minority Serving Institutions (MSIs) Initiative. Pursuant to Executive Orders 13555 ("White House Initiative on Educational Excellence for Hispanics"), 13270 ("Tribal Colleges and Universities"), and 13532 ("Promoting Excellence, Innovation, and Sustainability at Historically Black Colleges and Universities"), DOC is strongly committed to broadening the participation of minority serving institutions (MSIs) in its financial assistance award programs. The DOC's goals include achieving full participation of MSIs in order to advance the development of human potential, strengthen the Nation's capacity to provide high-quality education, and increase opportunities for MSIs to participate in and benefit from Federal financial assistance programs. The DOC encourages all applicants and recipients to include meaningful participation of MSIs. Institutions eligible to be considered MSIs are listed on the Department of Education's website at http://www2.ed.gov/about/offices/list/ocr/edlite-minorityinst.html.

13. Homeland Security Presidential Directive – 12. If the performance of a grant award requires recipients to have routine access to Federally-controlled facilities and/or information systems (for purpose of this paragraph, "routine access" is defined as more than 180 days), such personnel must undergo the personal identity verification credential process. Any items or services delivered under a financial assistance award shall comply with the Department of Commerce personal identity verification procedures, which implement Homeland Security Presidential Directive -12, FIPS PUB 201, and OMB Memorandum M-05-24. The recipient shall ensure that its subrecipients and contractors (at all tiers) performing work under this award comply with the requirements contained in this term. The Grants

Officer may delay final payment under an award if the subrecipient or contractor fails to comply with the requirements listed in the term below. The recipient shall insert the following clause in all subawards and contracts when the subaward recipient or contractor is required to have routine physical access to a Federally-controlled facility or routine access to a Federally-controlled information system:

a. The subrecipient or contractor shall comply with DOC personal identity verification procedures identified in the subaward or contract that implement Homeland Security Presidential Directive 12 (HSPD-12), Office of Management and Budget (OMB) Guidance M-05-24, as amended, and Federal Information Processing Standards Publication (FIPS PUB) Number 201, as amended, for all employees under this subaward or contract who require routine physical access to a Federally-controlled facility or routine access to a Federally-controlled information system.

b. *The subrecipient or contractor shall account for all forms of Government-provided identification issued to the subrecipient or contractor employees in connection with performance under this subaward or contract. The subrecipient or contractor shall return such identification to the issuing agency at the earliest of any of the following, unless otherwise determined by DOC: (1) When no longer needed for subaward or contract performance; (2) Upon completion of the subrecipient or contractor employee's employment; (3) Upon subaward or contract completion or termination.*

14. Compliance with Department of Commerce Bureau of Industry and Security Export Administration Regulations.

a. The extent that a financial assistance award involves access to export-controlled items, the following paragraphs apply.

b. In performing a financial assistance award, the recipient may gain access to items subject to export controls (export-controlled items) under the Export Administration Regulations (EAR). The recipient is responsible for compliance with all applicable laws and regulations regarding export-controlled items, including the EAR's deemed exports and reexport provisions. The recipient shall establish and maintain throughout performance of the financial assistance award effective export compliance procedures at DOC and non-DOC facilities throughout performance of the financial assistance award. At a minimum, these export compliance procedures must include adequate controls relating to physical, verbal, visual and electronic access to export-controlled items, including by foreign nationals.

c. Definitions

(1) Export-controlled Items. Export-controlled Items (commodities, software or technology) are those items that are subject to the EAR (15 CFR §§ 730-774), implemented by the DOC's Bureau of Industry and Security. These are generally known as "dual-use" items, items with military and commercial application.

(2) Deemed Export/Reexport. The EAR defines a deemed export as a release of export-controlled items (specifically, technology or source code) to a foreign national in the U.S. Such release is "deemed" to be an export to the home country of the foreign national. 15 C.F.R. § 734.2(b)(2)(ii). A release may take the form of visual inspection, oral exchange of information, or the application abroad of knowledge or technical experience acquired in the U.S. If such a release

occurs abroad, it is considered a deemed reexport to the foreign national's home country. Licenses from DOC may be required for deemed exports or reexports.

d. The recipient shall control access to all export-controlled items that it possesses or that comes into its possession in performance of a financial assistance award, to ensure that access to, or release of, such items are restricted or licensed, as required by applicable Federal laws, Executive Orders, and/or regulations, including the EAR.

e. As applicable, recipient personnel and associates at DOC sites will be informed of any procedures to identify and protect export-controlled items.

f. To the extent the recipient wishes to provide foreign nationals with access to export-controlled items, the recipient shall be responsible for obtaining any necessary licenses, including licenses required under the EAR for deemed exports or deemed reexports.

g. Nothing in the terms of this financial assistance award is intended to change, supersede, or waive the requirements of applicable Federal laws, Executive Orders or regulations.

h. Compliance with this term will not satisfy any legal obligations the recipient may have regarding items that may be subject to export controls administered by other agencies such as the Department of State, which has jurisdiction over exports of munitions items subject to the International Traffic in Arms Regulations (ITAR) (22 C.F.R. §§ 120-130), including releases of such items to foreign nationals.

i. The recipient shall include this term, including this paragraph (i), in all lower tier transactions (subawards, contracts, and subcontracts) under this financial assistance award that may involve access to export-controlled information technology.

15. The Trafficking Victims Protection Act of 2000 (22 U.S.C. 7104(g)), as amended, and the implementing regulations at 2 CFR part 175. This Act authorizes termination of financial assistance provided to a private entity, without penalty to the Federal Government, if the recipient or subrecipient engages in certain activities related to trafficking in persons. The Department of Commerce has incorporated the following award term required by 2 C.F.R. § 175.15(b). *See also* ttp://www.gpo.gov/fdsys/pkg/CFR-2012-title2-vol1/pdf/CFR-2012-title2-vol1-sec175-15.pdf for the full award term:

<u>Award Term from 2 C.F.R. § 175.15(b): Trafficking in persons:</u>

a. Provisions applicable to a recipient that is a private entity.

1. You as the recipient, your employees, subrecipients under this award, and subrecipients' employees may not—

i. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;

ii. Procure a commercial sex act during the period of time that the award is in effect; or

iii. Use forced labor in the performance of the award or subawards under the award.

2. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if you or a subrecipient that is a private entity —

i. Is determined to have violated a prohibition in paragraph a.1 of this award term; or

ii. Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph a.1 of this award term through conduct that is either— (A) Associated with performance under this award; or (B) Imputed to you or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 C.F.R. Part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by DOC at 2 C.F.R. Part 1326, "Nonprocurement Debarment and Suspension."

b. Provision applicable to a recipient other than a private entity. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity—

1. Is determined to have violated an applicable prohibition in paragraph a.1 of this award term; or

2. Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph a.1 of this award term through conduct that is either—

i. Associated with performance under this award; or

ii. Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 C.F.R. Part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by DOC at 2 C.F.R. Part 1326, "Nonprocurement Debarment and Suspension."

c. Provisions applicable to any recipient.

1. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a.1 of this award term.

2. Our right to terminate unilaterally that is described in paragraph a.2 or b of this section:

i. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and

ii. Is in addition to all other remedies for noncompliance that are available to us under this award.

3. You must include the requirements of paragraph a.1 of this award term in any subaward you make to a private entity.

d. Definitions. For purposes of this award term:

1. Employee means either:

i. An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or

ii. ii. Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer or individual whose services

are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.

2. Forced labor means: labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

3. Private entity:

i. Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR 175.25;

ii. ii. Includes: (A) A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 CFR 175.25(b); and (B) A for-profit organization.

4. "Severe forms of trafficking in persons," "commercial sex act," and "coercion" have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. 7102).

16. The Federal Funding Accountability and Transparency Act of 2006 (Pub. L. No. 109-282, codified at 31 U.S.C. § 6101 Note). This Act requires that information on Federal awards (Federal financial assistance and expenditures) be made available to the public via a single, searchable website. This information is available at the USASpending.gov website. Recipients and subrecipients must include the following required data elements in their applications:

- Name of entity receiving award;
- Award amount;
- Transaction type, funding agency, or Catalog of Federal Domestic Assistance Number, and descriptive award title;
- Location of: entity, primary location of performance (City/State/Congressional District/Country; and
- Unique identifier of entity.

a. Reporting Subawards and Executive Compensation Data Reporting Requirements. Prime grant recipients awarded a new Federal grant greater than or equal to $25,000 on or after October 1, 2010, other than those funded by the Recovery Act, are subject to FFATA subaward reporting requirements as outlined in the OMB guidance issued August 27, 2010. The prime recipient is required to file a FFATA subaward report by the end of the month following the month in which the prime recipient awards any sub-grant greater than or equal to $25,000. See Pub. L. No. 109-282, as amended by section 6202(a) of Pub. L. No. 110-252 (see 31 U.S.C. 6101 note). The full reporting requirements are located in Appendix A of 2 C.F.R. Part 170 and are available on GPO's FDsys website: http://www.gpo.gov/fdsys/pkg/CFR-2011-title2-vol1/pdf/CFR-2011-title2-vol1-part170-appA.pdf.

<u>Award Term from Appendix A of 2 C.F.R. Part 170</u>:

a. Reporting of first-tier subawards.

1. Applicability. Unless you are exempt as provided in paragraph d. of this award term, you must report each action that obligates $25,000 or more in Federal funds that does not include Recovery funds (as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111–5) for a subaward to an entity (see definitions in paragraph e. of this award term).

2. Where and when to report.

i. You must report each obligating action described in paragraph a.1. of this award term to http://www.fsrs.gov.

ii. For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)

3. What to report. You must report the information about each obligating action that the submission instructions posted at http://www.fsrs.gov specify.

b. Reporting Total Compensation of Recipient Executives.

1. Applicability and what to report. You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if—

i. the total Federal funding authorized to date under this award is $25,000 or more;

ii. in the preceding fiscal year, you received—

(A) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

(B) $25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at http://www.sec.gov/answers/execomp.htm.)

2. Where and when to report. You must report executive total compensation described in paragraph b.1. of this award term:

i. As part of your registration profile at http://www.ccr.gov.

ii. By the end of the month following the month in which this award is made, and annually thereafter.

c. Reporting of Total Compensation of Subrecipient Executives.

1. Applicability and what to report. Unless you are exempt as provided in paragraph d. of this award term, for each first-tier subrecipient under this award, you shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if—

i. in the subrecipient's preceding fiscal year, the subrecipient received—

(A) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

(B) $25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and

ii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at http://www.sec.gov/answers/execomp.htm.)

2. Where and when to report. You must report subrecipient executive total compensation described in paragraph c.1. of this award term:

i. To the recipient.

ii. By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (i.e., between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.

d. Exemptions. If, in the previous tax year, you had gross income, from all sources, under $300,000, you are exempt from the requirements to report: i. Subawards, and ii. The total compensation of the five most highly compensated executives of any subrecipient.

e. Definitions. For purposes of this award term:

1. Entity means all of the following, as defined in 2 CFR part 25:

i. A Governmental organization, which is a State, local government, or Indian tribe;

ii. A foreign public entity;

iii. A domestic or foreign nonprofit organization;

iv. A domestic or foreign for-profit organization;

v. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

2. Executive means officers, managing partners, or any other employees in management positions.

3. Subaward:

i. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.

ii. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. __.210 of the attachment to OMB Circular A–133, "Audits of States, Local Governments, and Non-Profit Organizations").

iii. A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.

4. Subrecipient means an entity that:

i. Receives a subaward from you (the recipient) under this award; and
ii. Is accountable to you for the use of the Federal funds provided by the subaward.

5. Total compensation means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):

i. Salary and bonus.
ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
v. Above-market earnings on deferred compensation which is not tax-qualified.
vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds $10,000.

c. Central Contractor Registration (CCR) and Universal Identifier requirements.

1. Requirement for Central Contractor Registration (CCR). Unless you are exempted from this requirement under 2 C.F.R. § 25.110, you as the recipient must maintain the currency of your information in the CCR until you submit the final financial report required under this award or receive the final payment, whichever is later. This requires that you review and update the information at least annually after the initial registration, and more frequently if required by changes in your information or another award term.

2. Requirement for Data Universal Numbering System (DUNS) Numbers If you are authorized to make subawards under this award, you:

i. Must notify potential subrecipients that no entity (see definition in paragraph C of this award term) may receive a subaward from you unless the entity has provided its DUNS number to you.

ii. May not make a subaward to an entity unless the entity has provided its DUNS number to you.

3. Definitions for purposes of this award term:

i. Central Contractor Registration (CCR) means the Federal repository into which an entity must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the System for Award Management Internet site (currently at https://www.sam.gov/portal/public/SAM/).

ii. Data Universal Numbering System (DUNS) number means the nine-digit number established and assigned by Dun and Bradstreet, Inc. (D&B) to uniquely identify business entities. A DUNS number may be obtained from D&B by telephone (currently 866–705–5711) or the Internet (currently at http://fedgov.dnb.com/webform).

iii. Entity, as it is used in this award term, means all of the following, as defined at 2 C.F.R. part 25, subpart C:

(A) A Governmental organization, which is a State, local government, or Indian Tribe;
(B) A foreign public entity;
(C) A domestic or foreign nonprofit organization;
(D) A domestic or foreign for-profit organization; and
(E) A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

iv. Subaward:

(A) This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.
(B) The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. __.210 of the attachment to OMB Circular A–133, "Audits of States, Local Governments, and Non-Profit Organizations").
(C) A subaward may be provided through any legal agreement, including an agreement that you consider a contract.

v. Subrecipient means an entity that:

(A) Receives a subaward from you under this award; and
(B) Is accountable to you for the use of the Federal funds provided by the subaward.

17. Comply with all applicable requirements of all other Federal laws, Executive Orders, regulations, and policies governing the program under which funding is provided.

[Note: An annual appropriation act can include general provisions stating national policy requirements that apply to the use of financial assistance funds appropriated by the act. Because these requirements can be of limited duration and because they can vary from year to year and from one agency's appropriations act to another agency's appropriations, the Grants Officer must know the agency or agencies and fiscal year(s) of the appropriation being obligated and may need to consult the FALD or the Budget Office if the requirements applicable to those appropriations are unknown.]

F. Requirements for Research Awards.

In addition to the items listed in Sections B through E, above, the following is a list of requirements that generally apply to DOC research awards:

1. Research Misconduct. The DOC adopts, and applies to financial assistance awards for research, the Federal Policy on Research Misconduct (Federal Policy) issued by the Executive Office of the President's Office of Science and Technology Policy on December 6, 2000 (65 Fed. Reg. 76260 (2000)). As provided for in the Federal Policy, research misconduct refers to the fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results. Research

misconduct does not include honest errors or differences of opinion. Recipient organizations that conduct extramural research funded by DOC must foster an atmosphere conducive to the responsible conduct of sponsored research by safeguarding against and resolving allegations of research misconduct. Recipient organizations also have the primary responsibility to prevent, detect, and investigate allegations of research misconduct and, for this purpose, may rely on their internal policies and procedures, as appropriate, to do so. Federal award funds expended on an activity that is determined to be invalid or unreliable because of research misconduct may result in appropriate enforcement action under the award, up to and including award termination and possible suspension or debarment. The DOC requires that any allegation that contains sufficient information to proceed with an inquiry be submitted to the Grants Officer, who will also notify the OIG of such allegation. Once the recipient organization has investigated the allegation, it will submit its findings to the Grants Officer. The DOC may accept the recipient's findings or proceed with its own investigation. The Grants Officer shall inform the recipient of the DOC's final determination.

2. Comply with 15 CFR Part 27 regarding the protection of human subjects involved in research, development, and related activities. No research involving human subjects is permitted under any DOC financial assistance award unless authorized in writing by the Grants Officer.

[Note: DOC may adopt further regulatory requirements related to research involving human subjects. Specifically, DOC is considering adopting parts of the common rule that establish additional protections for special classes of human subjects, such as prisoners, children, pregnant women, fetuses, and fetal tissue. DOC may adopt additional regulatory requirements consistent with other laws that do not currently apply to DOC that relate to transplantation of fetal tissue, xenotransplantation, cloning, research involving recombinant DNA molecules and embryo research.]

3. Comply with the Laboratory Animal Welfare Act of 1966 (Public Law 89-544), as amended (7 U.S.C. §§ 2131 *et seq.*) (animal acquisition, transport, care, handling, and use in projects); the Endangered Species Act (16 U.S.C. §§ 1531 *et seq.*); the Marine Mammal Protection Act (16 U.S.C. §§ 1361 *et seq.*) (taking possession, transport, purchase, sale, export or import of wildlife and plants); the Nonindigenous Aquatic Nuisance Prevention and Control Act (16 U.S.C. §§ 4701 *et seq.*) (ensuring that preventive measures are taken or that probable harm of using species is minimal if there is an escape or release); and all other applicable statutes pertaining to the care, handling, and treatment of warm-blooded animals held for research, teaching, or other activities supported by Federal financial assistance. No research involving vertebrate animals is permitted under any DOC financial assistance award unless authorized by the Grants Officer.

4. Publications, Videos and Acknowledgment of Sponsorship. Publication of results or findings in appropriate professional journals and production of video or other media is encouraged as an important method of recording, reporting and otherwise disseminating information and expanding public access to federally-funded projects (e.g., scientific research). Recipients may be required to submit a copy of any publication materials, including but not limited to print, recorded or Internet materials, to the funding agency. When releasing information related to a funded project, recipients must include a statement that the project or effort undertaken was or is sponsored by DOC. Recipients are responsible for assuring that every publication of material based on, developed under, or otherwise produced under a DOC financial assistance award, except scientific articles or papers appearing in scientific, technical or professional journals, contains the following disclaimer or other disclaimer approved by the Grants Officer:

This [report/video/etc.] was prepared by [recipient name] using Federal funds under award [number] from [name of operating unit], U.S. Department of Commerce. The statements, findings, conclusions, and recommendations are those of the author(s) and do not necessarily reflect the views of the [name of operating unit] or the U.S. Department of Commerce.

5. Requirements for Construction Awards. Please refer to Chapter 17 of the Manual for detailed requirements of Construction awards.

16. OTHER GRANTS ADMINISTRATION POLICIES AND REQUIREMENTS

A. Anti-Deficiency Act.

The Anti-Deficiency Act (31 U.S.C. § 1341) prohibits making or authorizing the making of an expenditure or obligation in excess of amounts available or involving the government in a contract or obligation in advance of an appropriation unless authorized by law. Federal assistance funds may not be awarded by DOC unless the funds are currently available in a DOC appropriation or fund. For awards to be funded with amounts transferred from another agency, the transfer agreement must be complete prior to approval of the award by DOC. Questions concerning the Anti-Deficiency Act should be referred to the OGC General Law Division.

B. *Bona Fide* Needs Rule.

The *bona fide* needs rule provides that an appropriation which is limited for obligation to a definite period is available only for payment of expenses properly incurred during the period of availability or to complete awards properly made within that period (31 U.S.C. § 1502(a)). This rule applies to all Government activities carried out with appropriated funds. An agency's "need" in the grant context is to make a grant in furtherance of the goals Congress hoped to achieve when it enacted the grant-making authority. In this context, the agency's "need" is to make a grant, and the grantee's use of grant funds has no relevance in the assessment of agency needs. For that reason, a *bona fide* needs analysis in the grant context focuses on whether the grant was made during the period of availability of the appropriation charged and furthers the authorized purpose of program legislation. B-289801, Dec. 30, 2002. The determining factor is that the grants, at the time of award, further the objective of the grant legislation.

C. Checklists.

Checklists can be effective tools in assuring that required actions in specific areas have been completed, and they are helpful in the review and analysis of various documents. Use of checklists is encouraged but not required by this Manual.

D. Conflicts of Interest.

It is the policy of DOC to maintain high standards of conduct to prevent real or apparent conflicts of interest in connection with awards. A conflict of interest exists when a person participates in a matter which is likely to have a direct and predictable effect on his or her personal or financial interests. A conflict also exists where there is an appearance that a person's objectivity in performing his or her responsibilities is impaired. An appearance of impairment of objectivity could result from an organizational conflict where, because of other activities or relationships with other persons or entities, a person is unable or potentially unable to render impartial assistance or advice to the government. A conflict of interest could also result from non-financial gain to the individual, such as benefit to reputation or prestige in a professional field. Conflicts could inadvertently occur as program officials carry out their responsibilities during the evaluation and selection process, during the review process, and as recipients carry out their responsibilities under awards. Conflicts of interest should be avoided, but if they are discovered, they should promptly be resolved through disqualification, divestiture, waiver

or other appropriate measures. Several requirements are applicable to the activities of individuals and organizations in the context of financial assistance.

1. Federal Employees

a. Under a criminal statute (18 U.S.C. § 208) and Government-wide Standards of Conduct (5 CFR Part 2635), a Federal employee may not participate in an official capacity in a matter which is likely to have a direct and predictable effect on his or her financial interests. An employee also should not participate in the evaluation or selection process in any circumstance where his/her participation would create the appearance of loss of impartiality, including situations in which one of the parties is, or is represented by, a member of the employee's household, the employee's relative or a person with whom the employee has or is seeking business relations. Any situation which creates an actual conflict or the appearance of a conflict should be brought to the attention of the Program Officer for appropriate action. Depending on the particular circumstance, resolution may consist of disqualification, divestiture, waiver, or other appropriate measures.

b. In addition to these restrictions, Federal employees should not participate in any activities that would result in providing any person or organization a competitive advantage. For example, an employee, other than as part of his or her official duties, should not assist an applicant for a competitive financial assistance program with the preparation of a proposal to be submitted to the employee's agency. Additionally, an employee, other than as part of his or her official duties, may not submit applications for financial assistance to DOC on behalf of any other person or entity.

2. Review Panel Members. In order to ensure the integrity of the application review process, it is essential that reviewers be free from actual or apparent conflicts of interest or appearance of impairment of objectivity. In order to identify the existence of a conflict of interest, program officials must provide each reviewer with a certification form which sets forth standards for determining the existence of a conflict of interest and requires the reviewer to notify the Program Officer of any potential or actual conflicts. When a conflict or potential conflict of interest is identified, it must be resolved by the Program Officer through appropriate action, such as disqualification, divestiture, or waiver.

3. Recipient Employees. Financial assistance recipients are required to certify, through the execution of SF-424B, "Assurances for Non-Construction Programs," or SF-424D, "Assurances for Construction Programs," as applicable, that they will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain. This assurance is intended to avoid any conflict or appearance of a conflict of interest that might arise between a recipient employee's personal financial and other interests, and his or her duties and responsibilities under a financial assistance award. Costs incurred in violation of conflict of interest assurances contained in the SF-424B or SF-424D, as applicable may be determined to be neither reasonable nor in compliance with applicable cost limitations, and hence, unallowable under applicable cost principles.

4. Contracts and Subawards under Grants. Financial assistance recipients are required by 15 CFR § 14.42 and 15 CFR § 24.36(b)(3) to maintain written standards governing the performance of employees engaged in the award and administration of contracts. These standards are intended to prohibit employees, officers and agents from participating in the selection, award or administration of contracts supported by Federal funds if a conflict of interest would be involved. Violation of these procurement

requirements could be a basis for suspension or termination of an award, or other appropriate action. Because unresolved conflicts of interest have the potential to undermine the integrity of the financial assistance process, it is important that such conflicts be brought immediately to the attention of the Program Officer for resolution. The DOC applies this requirement to subawardees.

E. Consulting Services.

Grants and cooperative agreements are not to be used as legal instruments for consultant services for the purpose of performing in-house organizational studies or other studies for internal government use unless allowed by statute.

F. Coordination with DOC and Other Federal Agencies.

In order to avoid duplication of effort in work under DOC awards, projects will be coordinated as appropriate with other Federal agency programs, as well as with other operating units within DOC. Appropriate coordination shall be conducted for any project whose scope of work overlaps, relates to, or duplicates the program mission of another Federal program before an award is approved for funding. The DOC supports interagency programs to provide support for research and other programs. It is, therefore, sometimes necessary to accommodate the requirements of partner agencies in awards. DOC will be as flexible as possible in consideration of partner agency needs for application requirements, review and selection procedures and final award notifications. As long as DOC policies and procedures are followed, the administration of interagency programs involving DOC may include requirement elements from other Federal agencies. In cases where funds are transferred from other Federal agencies, documentation of agreements, including but not limited to, any agreements pursuant to the Economy Act or Memoranda of Understanding/Agreement, must be included in award files.

G. Criminal and Prohibited Activities.

Laws are enacted to preserve the integrity of the Federal Government and the public by holding Federal contractors, grantees, and agency employees accountable for any criminal or prohibited activities conducted while participating under a Federal program.

1. The Program Fraud Civil Remedies Act (31 U.S.C. §§ 3801-3812), provides for the imposition of civil penalties against persons who make false, fictitious, or fraudulent claims to the Federal Government for money (including money representing grants, loans or other benefits). Implementing regulations for DOC are published at 15 CFR Part 25.

2. False statements (18 U.S.C. §§ 287 and 1001), provides that whoever makes or presents any false, fictitious, or fraudulent statements or representations or claims against the United States shall be subject to imprisonment of not more than five years and shall be subject to a fine in the amount provided by 18 U.S.C. § 287.

3. The False Claims Act (31 U.S.C. §3729 *et seq.*), provides that suits under this act can be brought by the government or a person on behalf of the government for false claims under Federal assistance programs.

4. Copeland "Anti-Kickback" Act (18 U.S.C. § 874 and 40 U.S.C. § 276c), prohibits a person or organization engaged in a Federally supported project from enticing an employee working on the project from giving up a part of his compensation under an employment contract.

H. DOC Forms.

DOC grants administration forms approved for use with grants and cooperative agreements are listed below. Operating units must ensure that these are the forms used for their prescribed purposes.

1. Form CD-450 - Financial Assistance Award

2. Form CD-451 - Amendment to Financial Assistance Award

3. Form CD-478 - Federal Assistance Information Sheet

4. Form CD-511 - Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying

5. Form CD-512 - Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying

6. Form CD-571 - Reviewer Conflict of Interest and Confidentiality Certification for Non-Governmental Peer Reviewers

I. Freedom of Information Act (FOIA).

The Freedom of Information Act (FOIA), found at 5 U.S.C. § 552, generally provides that any person has a right of access to Federal agency records, except to the extent that such records (or portions thereof) are protected from disclosure by exemptions. The DOC regulations implementing the FOIA are found at 15 CFR Part 4, "Public Information," which sets forth rules for DOC and operating units to make requested materials, information, and records publicly available under FOIA. Unless prohibited by law and to the extent permitted under the FOIA, contents of applications and proposals submitted by successful applicants may be released in response to FOIA requests. In addition, 15 CFR §14.36, Intangible Property, requires that research data relating to published research findings produced under an award that were used by the Federal Government in developing an agency action that has the force and effect of law will be made available to the public through the procedures established under the FOIA.

J. Management and Institutional Grant Reviews.

1. Management Reviews. OAM will conduct reviews to evaluate the internal grants administration policies and procedures of the operating units, including field or remote locations. NIST, NOAA, and EDA grants operating units will be evaluated once every three years. More frequent reviews will be scheduled when justified by operational issues. At a minimum, the review team should include members from the OGC as well as knowledgeable representatives from operating units other than the unit under review. The scope of the review will include but not be limited to compliance with applicable

public laws, regulations, OMB circulars, this Manual, and internal grants administration policies of the operating unit. The review team's report will be sent to the operating unit for comment prior to publication.

2. Reviews of Institutional Grant Awards. Each financial assistance program that has been authorized by the Grants Officer to make institutional awards must establish procedures in consultation with the Grants Officer for an independent review and evaluation of the program and/or the institutional awards, the performance of the institutional award recipients, the effectiveness of the program and of the recipients in meeting the objectives and goals of the program. At least once every five years a review must be conducted and the results of the review, including any findings and recommendations, shall be submitted to the Grants Officer in a timely manner, with a copy of the report provided to OAM, as appropriate.

K. Minimum Notice for Competitive Request for Applications.

In order to provide the public reasonable notice, there must be a minimum of 30 calendar days between the date of posting of an FFO on Grants.gov, or if one was published, publication of a *Federal Register* notice and the closing date for receipt of applications (e.g., November 1, 20XX publication date and December 1, 20XX closing date).

L. Opportunities for Small Businesses, Minority Business Enterprises and Women's Business Enterprises.

DOC encourages recipients to utilize small businesses, minority business enterprises and women's business enterprises in contracts under financial assistance awards. The Minority Business Development Agency will assist recipients in matching qualified minority business enterprises with contract opportunities. For further information visit MBDA's website at http://www.mbda.gov.

EO 12432 (July 14, 1983) requires that each Federal agency identified as having substantial procurement or grant-making authority develop an Annual Minority Business Development Plan to increase minority business participation and report on the progress towards accomplishing this plan. The DOC is strongly committed to these objectives and will encourage all recipients of grants and cooperative agreements to take positive steps to ensure fairness and equity.

M. Order of Precedence.

The following is the order of legal precedence for grants and cooperative agreements. There should be no conflicting guidance but, in the event of a discrepancy, the order of precedence for DOC grants and program officials is listed in descending order: public laws, regulations, applicable notices published in the *Federal Register*, Executive Orders, OMB circulars, DOC ST&Cs, agency standard award conditions (if any), and special award conditions.

[Note: Special Award Conditions may take precedence over DOC ST&Cs, on a case-by-case basis, when allowed by the DOC ST&Cs.]

N. Paperwork Reduction Act (PRA) - Collections of Information Conducted under Grants and Cooperative Agreements.

The PRA (44 U.S.C. 3501), and its implementing regulations at 5 CFR 1320, "Controlling Paperwork Burdens on the Public," require an agency to obtain approval from OMB before conducting or sponsoring a "collection of information." The regulations provide that a collection of information undertaken by a recipient of a Federal grant is considered to be "sponsored" by an agency only if "(1) The recipient of a grant is collecting information at a specific request of the agency; or (2) The terms and conditions of the grant require specific approval by the agency of the collection of information or the collection procedures."

O. Patents and Intellectual Property Rights.

1. Invention. Unless otherwise provided by law, the rights to any invention made by a recipient under a DOC financial assistance award are determined by the Bayh-Dole Act, Pub. L. No. 96-517, as amended, and as codified in 35 U.S.C. § 200 *et seq*., except as otherwise required by law. The specific requirements governing the development, reporting, and disposition of rights to inventions and patents resulting from financial assistance awards are described in more detail in 37 C.F.R. Part 401 and in particular, in the standard patent rights clause in 37 C.F.R. § 401.14, which is hereby incorporated by reference into this award.

a. Ownership.

(1) Recipient. The recipient has the right to own any invention it makes (conceived or first actually reduced to practice) or made by its employees. The recipient that is a non-profit organization, which includes a university or other institution of higher learning, may not assign its rights to an invention a third party without the permission of DOC unless it is to a patent management organization (i.e., a university's research foundation). The recipient's ownership rights are subject to the government's nonexclusive, nontransferable, irrevocable, paid-up license and other rights.

(2) Department. If the recipient elects not to retain title, fails to disclose the invention to the agency within the required time limits, or does not file a patent application within the time limits set forth in the standard patent rights clause, DOC may request an assignment of all rights, which is normally subject to a limited royalty free nonexclusive license for the recipient. DOC owns any invention made solely by its employees but may license the recipient in accordance with the procedures in 37 CFR Part 404.

(3) Inventor/Employee. If neither the recipient nor DOC is interested in owning an invention by a recipient employee, the recipient, with the written concurrence of DOC Patent Counsel, may allow the inventor/employee to own the invention subject to certain restrictions as described in 37 CFR § 401.9.

(4) Joint inventions. Inventions made jointly by a recipient and a DOC employee will be owned jointly by the recipient and DOC. However, DOC may transfer its rights to the recipient as authorized by 35 U.S.C. § 202(e) and 37 CFR § 401.10 if the recipient is willing to patent and license the invention in exchange for a share of "net" royalties based on the number of inventors (e.g., 50-

50 if there is one recipient and DOC employee). The agreement will be prepared by DOC Patent Counsel and may include other provisions, such as a royalty free license to the Government and certain other entities. The provision at 35 U.S.C. § 202(e) also authorizes the recipient to transfer its rights to the Government, which can agree to share royalties similarly as described above.

b. Responsibilities - iEdison. The recipient has responsibilities and duties set forth in the standard patent rights clause, which are not described below. The recipient is expected to comply with all the requirements of the standard patent rights clause and 37 CFR Part 401. Recipients of DOC financial assistance awards are required to submit their disclosures and elections electronically using the Interagency Edison extramural invention reporting system (iEdison) at www.iedison.gov. Recipients may obtain a waiver of this electronic submission requirement by providing to DOC compelling reasons for allowing the submission of paper copies of reports related to inventions

2. Patent Notification Procedures. Pursuant to E.O. 12889, DOC is required to notify the owner of any valid patent covering technology whenever the DOC or its financial assistance recipients, without making a patent search, knows (or has demonstrable reasonable grounds to know) that technology covered by a valid United States patent has been or will be used without a license from the owner. To ensure proper notification, if the recipient uses or has used patented technology under this award without a license or permission from the owner, the recipient must notify the Grants Officer.

3. Data, Databases, and Software. The rights to any work produced or purchased under a DOC Federal financial assistance award are determined by 15 C.F.R. § 24.34, for State and Local Governments, and 15 C.F.R. § 14.36, for Institutions of Higher Education, Hospitals, Other Non-Profit, and Commercial Organizations. Such works may include data, databases or software. The recipient owns any work produced or purchased under a DOC Federal financial assistance award subject to DOC's right to obtain, reproduce, publish or otherwise use the work or authorize others to receive, reproduce, publish or otherwise use the data for Government purposes.

4. Copyright. The recipient may copyright any work produced under a DOC Federal financial assistance award subject to DOC's royalty-free nonexclusive and irrevocable right to reproduce, publish or otherwise use the work, or authorize others to do so for Government purposes. Works jointly authored by DOC and recipient employees may be copyrighted but only the part authored by the recipient is protected because, under 17 U.S.C. § 105, works produced by Government employees are not copyrightable in the United States. On occasion, DOC may ask the recipient to transfer to DOC its copyright in a particular work when DOC is undertaking the primary dissemination of the work. Ownership of copyright by the Government through assignment is permitted by 17 U.S.C. § 105.

P. Payments.

Payments shall be made by electronic funds transfer in accordance with the Debt Collection Improvement Act of 1996. Advances should be authorized unless there is sufficient adverse information about the recipient in accordance with Chapter 9, subparagraph I.3.c.(2), of this Manual. Advances will be limited to the minimum amounts necessary to meet immediate disbursement needs. Advanced funds not disbursed in a timely manner must be promptly returned to DOC. The DOC monitors payments using the Department of the Treasury's Automated Standard Application for Payment (ASAP) system to ensure that recipients are not holding excess cash on hand.

Q. Privacy Act.

The Privacy Act (PA), found at 5 U.S.C. § 552a, provides an individual with a legal right to access records about herself or himself (subject to exemptions) and the right to request amendment of any record in that individual's PA file that is inaccurate, irrelevant, untimely, or incomplete. The PA also prohibits the unauthorized disclosure of PA protected information. The DOC's regulations implementing the PA are found at 15 CFR Part 4b, "Privacy Act."

R. Recipient Name Change.

A recipient organization may decide to change its legal name without changing any other aspect of the award (*e.g.*, there are no asset or ownership changes). In this instance, the Grants Officer must direct the recipient to provide documentation of the name change, such as a copy from the state government of a certificate from a Secretary of State verifying the change for an incorporated party. If the name change is implemented by common law rather than by legal action, the Grants Officer may instead accept an attestation by the Chief Executive Officer, President, or equivalent official of the organization, stating that the change occurred. The Grants Officer will amend the award to reflect the new name.

S. Requests for Prior Approval.

When a recipient is required to obtain approval before taking certain actions with respect to a grant or cooperative agreement, the Grants Office shall provide a decision in writing to the recipient within 30 days of receipt by the awarding agency. If a decision cannot be made within 30 days, the office holding the request must acknowledge receipt and inform the recipient in writing within 30 days when a decision can be expected.

T. Scientific or Research Misconduct.

The DOC adopts, and applies to financial assistance awards for research, the Federal Policy on Research Misconduct (Federal Policy) issued by the Executive Office of the President's Office of Science and Technology Policy on December 6, 2000 (65 Fed. Reg. 76260 (2000)). As provided for in the Federal Policy, research misconduct refers to the fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results. Research misconduct does not include honest errors or differences of opinion. Recipient organizations that conduct extramural research funded by the Department must foster an atmosphere conducive to the responsible conduct of sponsored research by safeguarding against and resolving allegations of research misconduct. Recipient organizations also have the primary responsibility to prevent, detect, and investigate allegations of research misconduct and, for this purpose, may rely on their internal policies and procedures, as appropriate, to do so. Federal award funds expended on an activity that is determined to be invalid or unreliable because of research misconduct may result in appropriate enforcement action under the award, up to and including award termination and possible suspension or debarment. The Department requires that any allegation that contains sufficient information to proceed with an inquiry be submitted to the Grants Officer, who will also notify the Office of the Inspector General of such allegation. Once the recipient organization has investigated the allegation, it will submit its findings to the Grants Officer. The Department may accept the recipient's findings or proceed with its own investigation. The Grants Officer shall inform the recipient of the DOC's final determination.

U. Statutory Authority.

Each financial assistance proposal must be awarded under the proper authorizing statute. Public Law 95-224, "Federal Grant and Cooperative Agreement Act of 1977," as amended (31 U.S.C. §§ 6301-6308) does not provide legislative authority to fund financial assistance awards. It merely provides the basis for selecting the appropriate funding instrument.

V. Transfer of Award.

In certain circumstances, the Program Officer and the recipient may agree that it would be in the best interests of the government and the recipient for an award to be transferred by DOC to a replacement recipient.

1. When the two organizations, the Program Officer and the Grants Officer agree that it is in the best interests of the Federal Government and the intended beneficiaries of the award to allow the transfer, the Grants Officer will amend the award to transfer it to the new recipient organization. In such cases, the Program Officer must submit a request to the Grants Officer to change recipients. The request shall include documentation attesting to the original recipient's and proposed replacement recipient's consent to the proposed transfer. Such documentation must include a written agreement between the original recipient and the proposed replacement recipient executed by authorized representatives of both parties. In this instance, the organization relinquishing the award will be liable for all programmatic activities and all funds expended under the award prior to the effective date of the transfer. The relinquishing organization will be responsible for all closeout activities, including having an audit performed, if required, for the award prior to the effective date of the transfer. The organization to which the award is transferred must submit an application (if appropriate) which includes a proposal and detailed budget narrative (a maximum of an original and two copies may be required by the Federal awarding agency). The following forms must also be submitted, as applicable: the SF-424, SF-424A, SF-424B, SF-424C, SF-424D, CD-511, SF-LLL, or any other approved program specific forms. The Program Officer will review all documents and make a recommendation as to the applicant's adequacy to meet program requirements which will be forwarded to the Grants Office along with the request. This review will be the same as the review of any new application, including a responsibility check on the applicant, unless that function is performed by the Grants Office. The language in the amendment must clearly delineate the responsibilities of both parties to the transfer.

2. Novation Agreement. A novation occurs when one organization takes over all of the liabilities and responsibilities of another organization. This might occur as a result of a merger, one organization buying another, an organization going out of business and entering into an agreement with another organization to take over its business, or a variety of other reasons.

   a. When an organization seeks to transfer an award to another organization as a result of a novation agreement, the two organizations must submit a proposed novation agreement to the Grants Officer, signed by the CEOs, Presidents, or equivalent fiduciary officers of the two organizations. The novation agreement must state that all rights, duties and obligations of the award are transferred without further claim and that the new recipient agrees to accept them. Furthermore, the new recipient must meet statutory and regulatory eligibility requirements. In the case of successor-in-interest organizations, the recipient shall submit relevant documentation reflecting the relationship between the recipient and the successor organization.

b. The Grants Officer will consult with the OGC/FALD on the legal merits of the proposed novation. If the novation is determined to be in order, the Grants Officer will request that the proposed new recipient submit an application and an amended proposal (if appropriate) to effect the change in award recipient. The application must include an original proposal and detailed budget narrative (as well as two copies if required by the Federal awarding agency). The following forms must be submitted, as applicable: the SF-424, SF-424A, SF-424B, SF-424C, SF-424D, SF-511, SF-LLL, or any other approved program specific forms. The Grants Officer will then obtain a review and written recommendation regarding the proposed novation from the Program Officer as to the programmatic efficacy of the proposed agreement. The Program Officer should examine whether the scope of work has changed or if there are other issues arising that would put the initial competitive selection in jeopardy because of differences between the original and the new recipient and review any related budgetary changes. The Grants Officer must make a responsibility determination regarding the new recipient. If the Grants Officer then determines that the award should continue, he/she will issue an amendment to the award to effect the transfer to the subsuming organization.

W. Transfer of Funds.

When other agencies transfer funds to DOC for financial assistance programs, DOC must generally comply with legislative requirements imposed on the transferred funds (*e.g.*, restrictions contained in a transferring agency's appropriation act and/or authorization act). If a statute places specific requirements on funds, those requirements generally remain with the funds upon transfer. When there is a specific limitation or requirement placed on the funds transferred by law of such transferring agency, the DOC award may have to include that limitation or requirement along with DOC terms and conditions, as appropriate. It is also possible that DOC may have legislation or requirements applicable to funds transferred to it and such requirements would need to be noted in the special award conditions, as appropriate.

X. Publications, Videos, and Acknowledgment of Sponsorship.

Publication of the results or findings in appropriate professional journals and production of videos or other media is encouraged as an important method of recording, reporting and otherwise disseminating information and expanding public access to federally-funded projects (e.g., scientific research).

The recipient may be required to submit a copy of any publication materials, including but not limited to print, recorded or Internet materials to the funding agency.

When releasing information related to a funded project the recipient must include a statement that the project or effort undertaken was or is sponsored by DOC. The recipient is also responsible for assuring that every publication of material based on, developed under or otherwise produced under a DOC award, except scientific articles or papers appearing in scientific, technical or professional journals, contains the following disclaimer or other disclaimer approved by the Grants Officer:

"This [report/video/etc.] was prepared by [recipient name] using Federal funds under award [number] from [name of operating unit], U.S. Department of Commerce. The statements, findings, conclusions, and recommendations are those of the author(s) and do not necessarily reflect the views of the [name of operating unit] or the U.S. Department of Commerce."

Y. Waivers and Deviations.

Any request for waivers and/or deviations from the requirements of this Manual must be submitted in writing to the Director, OAM, by the Head of Operating Unit. The request must include a full explanation of the reason for the request and justification for the deviation or waiver. OAM will review the request, coordinate its review with OGC and other appropriate offices, and provide a response in accordance with Chapter 4, Paragraph B.11. of this Manual. Requests for waivers and deviations from the requirements will be approved only in extraordinary circumstances and when such approval will be in the best interest of the Federal Government. Proposed deviations from DOC regulations (*e.g.*, uniform administrative requirements) may require that OAM seek prior approval from OMB.

Z. The Federal Funding and Accountability Act of 2006 (Pub. L. No. 109-282, 31 USC § 6101 note)

1. Searchable Website Requirements. The Federal Funding Accountability and Transparency Act of 2006 (FFATA) requires information on Federal awards (Federal financial assistance and expenditures) be made available to the public via a single, searchable website. This information is available at www.USASpending.gov. Recipients and subrecipients must include the following required data elements in their application:

   a. Name of entity receiving award;
   b. Award amount;
   c. Transaction type, funding agency, Catalog of Federal Domestic Assistance Number, and descriptive award title;
   d. Location of entity, primary location of performance (City/State/Congressional District/Country; and

   • Unique identifier of entity.

2. Reporting Subawards and Executive Compensation. Prime grant recipients awarded a new Federal grant greater than or equal to $25,000 on or after October 1, 2010, other than those funded by the Recovery Act, are subject to FFATA subaward reporting requirements as outlined in the OMB guidance issued August 27, 2010. The prime recipient is required to file a FFATA subaward report by the end of the month following the month in which the prime recipient awards any sub-grant greater than or equal to $25,000. See Pub. L. No. 109-282, as amended by section 6202(a) of Pub. L. No. 110-252 (see 31 U.S.C. 6101 note). The reporting requirements are located in Appendix A of 2 C.F.R. Part 170.

17. CONSTRUCTION AWARDS

A. Purpose.

This chapter applies when activities under a Department of Commerce award involve construction, as described in Section C below. Construction awards are primarily granted by three operating units within the Department of Commerce (DOC or the Department): the Economic Development Administration (EDA), the National Oceanic and Atmospheric Administration (NOAA) and the National Institute of Standards and Technology (NIST). This chapter describes the procedures for compliance, reporting, record-keeping, and administrative requirements that generally apply to DOC construction awards. Contact the specific operating unit for more operating unit-specific information and also see Appendix A, "Applicable Regulations, OMB Circulars and Agency-specific Guidance," to this chapter for applicable authorizes and for specific operating unit requirements. Also, when an appropriations statute or other direct statutory authority requires an operating unit to provide Federal assistance for a specific project or to a specific organization or individual (i.e., a hard earmark), FALD should be consulted to determine which provisions of this chapter apply.

B. Authority.

Construction activity is allowable only when program legislation includes specific authority for construction and/or when the DOC operating unit specifically authorizes such activity.

C. Scope of Chapter.

1. Construction. This chapter applies to an award in which the major purpose of the project or program is construction, such as the construction of new buildings, completion of shell space in existing buildings, renovation or rehabilitation of existing buildings, and construction or development of real property infrastructure improvements (e.g., site preparation, utilities, streets, curbs, sidewalks, parking lots, other streetscaping improvements, etc.).

2. Construction v. Alterations. Activities under an award are considered construction when the major purpose of the award is construction as defined in this chapter. In contrast, alteration of facilities incidental to a non-construction purpose is not considered construction under this chapter. For example, if the major purpose of an award is to allow a recipient to conduct educational or business seminars, the renovation of an educational exhibit or staging area would not be considered construction under this chapter.

D. Policy.

1. Grant Recipients as Trustees. Property that is acquired or improved, in whole or in part, with Federal assistance is held in trust by the recipient for the purpose(s) for which the award was made and for the estimated useful life of the project, during which period the DOC operating unit retains an undivided equitable reversionary interest in the property (the "Federal Interest"). Under the United

States Constitution (Article I, Section 8, Clause 1), Congress has the power to appropriate Federal funds. Incident to this power is the right "to further broad policy objectives by conditioning receipt of those Federal moneys upon compliance by the recipient with Federal statutory and administrative directives." *South Dakota v. Dole*, 483 U.S. 203, 207, quoting *Fullilove v. Klutznick*, 448 U.S. 448, 474 (1980). *See also* Article IV, Section 3, Clause 2, regarding Congress' power to make rules regarding property of the United States. The requirement that property purchased or improved with Federal funds continue to be used for the original statutory purpose for which it was acquired is embodied in the DOC's administrative rules for financial assistance. *See* 15 CFR §§ 14.32, 14.33, 14.37, 24.31, as applicable.

The U.S. Government Accountability Office explained the concept in *Principles of Federal Appropriations Law*, 3d Ed., Vol. II, Ch. 10, Pt. D (2006):

> [A] grantee holds grant funds, and property purchased with those funds, in the capacity of a trustee. For example, in *Joliet-Will*, 847 F.2d at 432 [*In re Joliet-Will County Community Action Agency*, 847 F.2d 430 (7th Cir.1988)], the court held that the grantee was essentially "a trustee, custodian, or other intermediary, who . . . is merely an agent for the disbursal of funds belonging to another," and that the grantee's 'ownership' was nominal, like that of a trustee. The trust concept finds support in an early Supreme Court decision, *Stearns v. Minnesota*, 179 U.S. 223 (1900), a land grant case in which the Court discussed the grant in trust terms.

Accordingly, the recipient holds grant funds and DOC-financed property in trust to serve the purpose of the operating unit's program for which the Financial Assistance Award (issued on Form CD-450) was made. The recipient's obligation to the Federal government continues for the estimated useful life of the project, as determined by the operating unit. If it is determined that a recipient is failing to meet this obligation, the operating unit may assert its equitable reversionary interest in the project. However, the operating unit's non-assertion of its interest does not constitute a waiver thereof.

2. Eminent Domain. In making a discretionary award for a construction project, the operating unit will consider the policy on eminent domain set out in Executive Order 13406, "*Protecting the Property Rights of the American People*." As appropriate, the terms and conditions of the award will include appropriate provisions to ensure that the recipient agrees:

a. Not to use any power of eminent domain available to the recipient (including the commencement of eminent domain proceedings) for use in connection with the project for the purpose of advancing the economic interests of private parties;

b. Not to accept title to land, easements, or other interest in land acquired by the use of any power of eminent domain for use in connection with the project for such purposes; and

c. Any use of the power of eminent domain to acquire land, easements or interests in land, whether by the recipient or any other entity that has the power of eminent domain, in connection with the project without prior written consent of the operating unit is an unauthorized use of the project. If the recipient puts the project to an unauthorized use, the recipient shall be required to compensate the operating unit in accordance with 15 C.F.R. §§ 14.32 or 24.31, as applicable.

3. Terms and Conditions of Award. The Financial Assistance Award (on Form CD-450), executed by the operating unit and by the recipient, together with the budget, special award conditions, and the standard terms and conditions, each as may be amended, and other Federal requirements incorporated

by reference, constitute the complete requirements, hereinafter referred to as the "Terms and Conditions," applicable to the operating unit's grant.

E. General Requirements.

The following sections of this chapter contain requirements that are applicable to construction awards that originate in all Department operating units. The Appendices contain requirements specific to NOAA, EDA, or NIST.

1. Recipient Responsibilities.

a. The recipient is responsible for complying with all Federal laws and regulations, Departmental policies, Executive Orders, and Office of Management and Budget (OMB) Circulars that are referenced in the Terms and Conditions, each as may be amended. These may include applicable Federal cost principles and administrative, audit, programmatic, financial, and property management requirements. The recipient is responsible for supervising the design, bidding, construction, and operation of construction projects in compliance with all grant requirements.

b. The operating unit will assist the recipient by providing information and guidance on the Federal requirements for each grant, such as the information contained in this chapter, the references and forms listed in the Appendix (Section I), and direct guidance and assistance provided by operating unit project managers.

c. The Financial Assistance Award. The recipient should pay particular attention to the following portions of the Financial Assistance Award:

(1) The description of the project on Form CD-450 and in the official letter to the recipient extending the award determines the project scope(s) of work to be funded under the grant.

(2) All Federal requirements specifically listed or incorporated into the award describe applicable Federal administrative requirements. These publications provide critical information on procurement, record-keeping, and cost principles, as well as other important administrative issues. Reprints of critical documents are available as indicated in the Appendix (Section I).

(3) The specific standard terms and conditions of the Financial Assistance Award applicable to the construction project.

(4) Any special award conditions, which may contain conditions that must be satisfied prior to advertisement for bids, start of construction, disbursement of grant funds, or other critical events, as well as conditions that extend for the duration of the estimated useful life of the project.

Failure to satisfy any Term or Condition may result in the disallowance of costs, or suspension or termination of the award and recovery of grant funds. In addition, such failure may have a negative impact on the recipient's ability to receive future funding from the Department. Special attention should be paid to the project development time schedule, which may only be extended as a result of a written request from the recipient for an amendment to the award and a corresponding written approval from the operating unit. The disbursement of grant funds is

not permitted when a project has exceeded the time schedule in the award, unless the operating unit has given written approval for a time schedule extension.

2. Operating Unit's Responsibilities.

a. Pre-award Requirements. In preparing documentation for a financial assistance award for a construction project, the Program Officer should be familiar with the following requirements:

(1) Forms. Unless the operating unit uses other OMB-approved forms for construction, operating units shall use Form SF-424, "*Application for Federal Assistance*," Form SF-424C, "*Budget Information - Construction Programs*," and Form SF-424D, "*Assurances – Construction Programs*," when the major purpose of a project or program is construction or real property development.

(2) Construction Terms. For EDA construction awards, the below terms in subparagraphs (2)(a) – (h) shall be included in all awards. For other DOC construction awards, the below terms in subparagraphs (2)(a) – (h) shall also be required, except that the Security Interest documentation requirements set forth below in subparagraph (2)(b) shall be at the discretion of the operating unit Grants Officer (*see* 15 C.F.R. §14.37 and 15 C.F.R. §24.31(b)(1)). In this connection, requiring a recipient to provide public notice of the Federal Interest in DOC construction projects is a highly encouraged practice and should be required by the operating unit Grants Officer whenever feasible considering the totality of circumstances surrounding a specific construction project or group of similarly situated construction projects.

(a) Maintenance. The recipient agrees that, for the estimated useful life of the facility funded with this award, the project will be properly and efficiently administered, operated, and maintained for the purpose authorized by this award and in accordance with the terms, conditions, requirements, and provisions of the award. If the [operating unit] determines at any time during the estimated useful life of the project, that the project and any project property is not being properly and efficiently administered, operated, and maintained, the [operating unit] shall have the right to terminate this award for cause and pursue any other remedies allowed by law.

(b) Security Interest. The recipient shall execute a security interest or other statement of the Federal Interest in the property, acceptable in form and substance to the [operating unit], which statement must be perfected and placed of record in accordance with local law, with continuances re-filed as appropriate. The recipient must provide the [operating unit] with a written statement from a licensed attorney in the jurisdiction where the property is located certifying that the Federal Interest has been protected, as required under the award and in accordance with local law. The attorney's statement, along with a copy of the instrument reflecting the recordation of the Federal Interest, shall be returned to the Grants Officer. The recipient may not dispose of, modify the use of, or change the terms of the real property title, or other interest in the project site and facilities without permission and instructions from [the operating unit]. No funds under this award shall be released until the recipient has complied with this provision, unless other arrangements satisfactory to [the operating unit] are made.

(c) Compliance. The recipient shall comply, and must require each contractor or subcontractor to comply, with all applicable Federal, state, and local laws and regulations.

(d) Energy Efficiency. The recipient shall apply, where feasible, sustainable, and energy efficient, design principles for the purpose of reducing pollution and energy costs and optimizing lifecycle costs associated with the construction.

(e) Signs. The recipient is responsible for constructing, erecting, and maintaining in good condition throughout the construction period a sign(s) satisfactory to the [operating unit] that identifies the project and indicates that the project is Federally funded. The [operating unit] also may require that the recipient maintain a permanent plaque or sign at the project site with the same or similar information.

(f) Land, Easements, and Rights of Way. The recipient must disclose all encumbrances to the operating unit. The operating unit will not accept any encumbrance that interferes with the construction, intended use, operation, or maintenance of the project during its estimated useful life. Unless otherwise provided for in the award, prior to grant of the award and commencement of construction, or when requested by the operating unit, the recipient must furnish evidence, satisfactory in form and substance to the operating unit, that title to real property is vested in the recipient, and that it has obtained any rights-of-way, easements, State and local government permits, long-term leases, or other property interests.

(g) Relocation Assistance. The provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (Pub. L. No. 91-646; 42 U.S.C. § 4601 *et seq.*), are applicable to each recipient of assistance from an operating unit. This Act provides assistance to persons, businesses, or farm operations affected by the acquisition, rehabilitation or demolition of real property acquired for a project financed wholly or in part with Federal assistance funds. It also requires compliance with specific guidelines pertaining to reimbursable costs incidental to such land acquisition.

(h) Tribal Employment Rights Ordinances. In accordance with Departmental policy, all operating units must recognize Tribal Employment Rights Ordinances ("TEROs"), which may provide for preferences in contracting and employment, in connection with its financial assistance awards. Tribal ordinances requiring preference in contracting, hiring, and firing and the payment of a TERO fee are allowable provisions under Federal awards and should be incorporated by the operating unit under its grants and contracts with American Indian and Alaska Native tribal governments. The payment of the TERO fee, which supports the tribal employment rights office to administer the preferences, should generally be allowable as an expense that is "necessary and reasonable for proper and efficient performance and administration" of an award, as provided under the applicable cost principles set out in 2 C.F.R. part 225.

b. Post-award Requirements.

(1) Review of Recipient-Submitted Documentation. The operating unit must review documentation submitted by the recipient and ensure that all such documentation is complete and accurate and complies with all applicable award requirements. At a minimum, the recipient's records must fully disclose: (a) all project expenditures, (b) procurement actions, (c) compliance with the Terms and Conditions of the Financial Assistance Award, and (d) contractor compliance with applicable Federal requirements, and (e) such other records as the operating unit determines will facilitate an effective audit.

(2) Reporting of Project Progress. Progress reports shall be due from the recipient on a regular basis and shall, at minimum, contain the following information:

(a) A comparison of actual accomplishments to the schedule established in the award;

(b) Reasons for delays in those cases where the schedule approved by the operating unit was not met;

(c) Any change to the purpose, nature, location, bona-fide need, neighborhood served, size, funding, or cost of the project;

(d) All change orders issued up to the date of the report and not previously reported to the operating unit; and other pertinent information including, when appropriate, an analysis and explanation of the cost overruns or high unit costs.

However, between the required reporting dates, events may occur, such as problems, delays, or adverse conditions, that will materially affect the ability of the recipient to attain program objectives, prevent time schedules and goals from being met, or preclude the attainment of project work units by established time periods. The recipient shall be required to inform the operating unit as soon as possible of any event which has an impact on the operating unit, including any favorable developments that enable the recipient to meet time schedules and goals sooner than anticipated or produce more work than originally projected. The recipient must notify the operating unit of such events in the most expeditious way possible and then, if the original notification was not in writing, provide the operating unit with written notification, including a statement of the event or issue, a statement of the course of action contemplated to resolve the matter, and any Federal assistance needed to resolve the situation. The operating unit will review and respond appropriately to documentation disclosing these events.

(3) Pre-Construction Documentation. The operating unit reviews documentation regarding the following:

(a) Environmental Compliance. The operating unit must ensure that environmental project reviews are conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (Pub. L. No. 91-190; 42 U.S.C. § 4321 *et seq.*, as implemented under 40 C.F.R. chapter V) (NEPA), when the award activities remain subject to Federal authority and control, and all other Federal environmental statutes, regulations and Executive Orders, as listed in the Terms and Conditions to the award. These authorities include the implementing regulations of NEPA, which require the operating units to provide public notice of the availability of project-specific environmental documents, such as environmental impact statements, environmental assessments, findings of no significant impact, and records of decision, as specified in 40 C.F.R. § 1506.6(b).

(b) Civil Rights Compliance. Discrimination by a grant recipient is prohibited in accordance with the following authorities:

(i) Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000d *et seq.*) and the Department's implementing regulations at 15 C.F.R part 8;

(ii) 42 U.S.C. § 3123 and 42 U.S.C. § 6709 (for EDA recipients), and the Department's implementing regulations at 15 C.F.R. §§ 8.7-8.15;

(iii) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794) and the Department's implementing regulations at 15 C.F.R. part 8b (the new language is included below*; see also Section C.01.d of the DOC Financial Assistance Standard Terms and Conditions (January 2013)* and Chapter 15.C.3. of this Manual*)*;

Revised ADA Standards for Accessible Design for Construction Awards: The U.S. Department of Justice has issued revised regulations implementing Title II of the Americans with Disabilities Act (ADA) (28 C.F.R. part 35; 75 FR 56164, as amended by 76 FR 13285) and Title III of the ADA (28 C.F.R. part 36; 75 FR 56164, as amended by 76 FR 13286). The revised regulations adopted new enforceable accessibility standards called the "2010 ADA Standards for Accessible Design" (2010 Standards). The 2010 Standards are an acceptable alternative to the Uniform Federal Accessibility Standards (UFAS). DOC deems compliance with the 2010 Standards to be an acceptable means of complying with the Section 504 accessibility requirements for new construction and alteration projects under 15 C.F.R. § 8b.18(c), as follows:

1. Public Recipients subject to Title II of the ADA may use either the 2010 Standards or UFAS where the physical construction or alternations commence on or after September 15, 2010 and before March 15, 2012 (see 28 C.F.R. § 35.151(c)(2)); and

2. Private Recipients subject to Title III of the ADA may use either the 2010 Standards or UFAS if the date when the last application for a building permit or permit extension is certified to be complete by a State, county, or local government (or, in those jurisdictions where the government does not certify completion of applications, if the date when the last application for a building permit or permit extension is received by the State, county, or local government) is on or after September 15, 2010 and before March 15, 2012, or if no permit is required, if the start of physical construction or alterations occurs on or after September 15, 2010 and before March 15, 2012 (see 28 C.F.R. § 36.406(a)(2)).

In all cases, once a recipient selects an applicable ADA accessibility standard (i.e., the 2010 Standards or UFAS), that standard must be applied to the entire facility. As of March 15, 2012, all new construction and alteration projects must comply with the 2010 Standards.

(iv) The Age Discrimination Act of 1975, as amended (42 U.S.C. § 6101 *et seq.*) and the Department's implementing regulations at 15 CFR part 20;

(v) The Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 *et seq*.) prohibiting discrimination on the basis of disability under programs, activities, and services provided or made available by State and local governments or instrumentalities or agencies thereto, as well as public or private entities that provide public transportation; and

(vi) Other Federal statutes, regulations, and Executive Orders, as applicable.

(4) Project Management Conference. Shortly after approval of the award, the operating unit may contact the recipient to arrange a project management conference. The purpose of the project management conference is to explain to the recipient its post-approval responsibilities for

administration of the award, including its responsibilities with respect to the Terms and Conditions of the award and applicable Federal requirements. Whenever practical, the project management conference should be held where appropriate operating unit regional office personnel will be available. The recipient's authorized representative, architect/engineer, attorney, and possibly the recipient's financial representative should attend.

(5) Architect/Engineer Agreement.

(a) The recipient's architect/engineer agreement shall provide for all services required by the recipient for the design and engineering phases of the project. Appropriate standards, guidance, or forms developed by professional organizations, such as the American Consulting Engineers Council ("ACEC"), American Society of Civil Engineers ("ASCE"), National Society of Professional Engineers ("NSPE"), and/or the Institute of Architects ("AIA") may be used where the recipient does not have standard procurement documents.

(b) The recipient must select the architect/engineer in accordance with the procurement standards set forth in 15 C.F.R. parts 14 or 24, as applicable. The "cost-plus-percentage-of-cost" and "percentage-of-cost" methods of contracting are specifically prohibited. *See* 15 C.F.R. §§ 14.44(c) or 24.36(f)(4), as applicable.

(c) The architect/engineer agreement shall cover all services necessary for the successful execution of the project, including consultations, surveys, soil investigations, supervision, travel, "as-built" or record drawings, arrow diagram (CPM/PERT) where applicable, and incidental costs. Regardless of who furnishes the construction inspector, the architect/engineer shall be held responsible for making sufficient visits to the project site to determine if the work is proceeding in accordance with the approved plans and specifications.

(d) All architect/engineer contracts awarded by the recipient shall include a provision to the effect that the recipient, the operating unit, the Comptroller General of the United States, the Inspector General of the Department of Commerce (OIG), or any of their duly authorized representatives, shall have access to any paper or electronic documents, books, correspondence, and records of the architect/engineer that are pertinent to the award in order to verify the recipient's compliance with award requirements.

(6) Early Construction Starts. In order for project costs to be eligible for reimbursement by the operating unit, the operating unit must determine that all contracts necessary for design and construction of the project facilities have been awarded in compliance with the Terms and Conditions of the award. If construction commences prior to the operating unit's determination, the recipient proceeds at its own risk until the operating unit's review and concurrence.

(7) Requirements During Construction.

(a) During construction, the recipient is responsible for:

(i) Ensuring project completion in accordance with approved plans and specifications;

(ii) Monitoring project progress and reporting progress to the operating unit;

(iii) Providing for adequate construction inspection;

(iv) Promptly paying costs incurred for the project purposes;

(v) Monitoring contractors' compliance with Federal, State, and local requirements; and

(vi) Constructing and maintaining in good condition throughout the construction period, of a sign or signs, at the project site in a conspicuous place indicating that the Federal Government is participating in the project.

(8) Scheduling Inspection for Final Acceptance. The recipient will schedule a final inspection when all construction has been completed, the architect/engineer has conducted a final inspection, and any deficiencies have been corrected. Representatives of the recipient, the architect/engineer, and the contractor(s) will make the final inspection. The operating unit must be given advance notice of the final inspection so that a representative of the operating unit may participate.

(9) Change Orders.

(a) As applicable, all contract change orders must be approved by the operating unit even if the operating unit is not participating in any costs associated with the change or if the contract price is to be reduced. Necessary supporting statements, estimates, specifications, and plans should be attached. Absent express legal authority, the operating unit will not approve change orders that change the purpose and intent (the scope) of the project. The recipient will be notified in writing of the operating unit's concurrence if the change order is acceptable.

(b) Unit prices are often used as a basis on which to make a contract award. In addition, they may be used for establishing actual costs where actual quantities differ from estimated quantities. Variations will normally require a change order to the contract whether or not a change in unit price is involved. Any increase in quantity that will result in an overall project cost overrun will require a change order to the contract. Any change to a unit price shown in the contract documents will require a change order to the contract. A change order may also be required at project completion to establish final quantities for unit price contracts.

(10) Specific Requirements for Contractors and Subcontractors. The recipient is responsible for ensuring that it includes applicable DOC compliance provisions, as contained in the Terms and Conditions of the award, including 15 C.F.R. parts 14 or 24, in all contracts let by the recipient under a DOC construction award. The recipient is also responsible for ensuring that, in turn, each contractor under a DOC construction awards includes the applicable DOC compliance provisions in all subcontracts awarded under the prime contract. Additionally, the recipient must ensure that each contractor and subcontractor agrees to comply with all applicable Federal, state, and local requirements pertaining to the project.

(11) Services Performed by the Recipient's Own Forces.

(a) The recipient may have a portion or all of the design, construction, inspection, legal services, or other work or services in connection with the project performed by personnel who are employed by the recipient either full-time or part-time ("in-house" or "force account" construction). If the recipient elects to use force account labor, the operating unit will furnish specific guidance to the

recipient that must be followed for the cost for such work to be eligible for reimbursement from the operating unit.

(b) The operating unit must review and approve the recipient's plan if this method is to be elected by the recipient.

(12) Contracting Standards.

(a) Standards of conduct. The recipient shall maintain a written code of conduct, which shall govern the actions individuals, such as any officer, employee or member of the board of directors or other governing board of the recipient, including any other parties that advise, approve, recommend or otherwise participate in the business decisions of the recipient, such as agents, advisors, consultants, attorneys, accountants or shareholders. This also includes immediate family, significant others, partners, and other persons directly connected to such persons by law or through a business arrangement.

(b) Awards to responsible contractors. The recipient shall make awards only to responsible contractors that possess the ability to perform successfully under the terms and conditions of a proposed procurement.

(c) Maintenance of records. The recipient shall maintain records sufficient to detail the history of each procurement transaction related to the project. These records will include but are not necessarily limited to the rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for determining the contract price.

(d) Settlement of issues. The recipient alone shall be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues (e.g., source evaluation, protests, disputes, and claims) arising out of procurements. The operating unit will not substitute its judgment for that of the recipient unless the matter, as determined in the operating unit's sole discretion, primarily involves a Federal issue.

(e) Wage rate requirements. For construction projects administered by EDA or as otherwise required by applicable program or appropriation legislation, wage rates paid for labor must not be less than the prevailing area wages, as determined by the U.S. Secretary of Labor and embodied in the construction contract pursuant to the requirements of the Davis-Bacon Act, as amended (40 U.S.C. § 276a *et seq.*).

(13) Review of Plans and Specifications.

(a) Review Prior to Advertising. When required by the operating unit, the recipient must submit plans, specifications, and certain related documents for review and concurrence prior to advertising for bids. This review is to ensure compliance with the Terms and Conditions of the award and does not attest to the accuracy or completeness of design, dimensions, details, proper selection of materials, or compliance with required codes or ordinances. This responsibility rests with the recipient.

(b) Review Prior to Award. As provided in 15 CFR § 14.44 and 15 CFR § 24.36(g)(2) (as applicable), the operating unit may also review proposed contracts and related procurement documents prior to award if:

(i) The procurement is expected to exceed the simplified acquisition threshold fixed at 41 U.S.C. 403(11) (currently set at $150,000), and the contract is to be awarded without competition after one bid or offer is received in response to a solicitation;

(ii) The proposed award is more than the simplified acquisition threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement;

(iii) The proposed contract modification changes the scope of the contract or increases the contract amount by more than the simplified acquisition threshold;

(iv) The recipient's procurement procedures and operations fail to comply with the procurement standards set out in the award, or

(v) The procurement, which is expected to exceed the simplified acquisition threshold, specifies a "name brand" product.

Until the operating unit has reviewed recipient's proposed contracts and related procurement documents and determined they comply with the Terms and Conditions, the recipient will proceed at its own risk regarding the eligibility of any costs incurred.

(14) Alternate Construction Procurement Methods. The Recipient may use alternate construction procurement methods to the traditional design/bid/build procedures (including lump sum or unit price-type construction contracts). If an alternate method is used, the recipient shall submit to the operating unit for approval a construction services procurement plan. In this situation, the recipient must secure a design professional to oversee the process.

(15) Protest Procedures. If the recipient is subject to 15 CFR part 14, the recipient is responsible, without recourse to DOC, regarding the settlement and satisfaction of all contractual and administrative issues arising out of a recipient's procurement under a DOC financial assistance award. See 15 CFR §14.41. State recipients must follow the same protest policies and procedures it uses for procurements from its non-Federal funds, pursuant to 15 CFR § 24.36(a). All other recipients subject to 15 CFR part 24 must have administrative protest procedures to handle complaints or protests regarding recipient contractor selection actions. No protest or complaint regarding a contractor selection action shall be accepted by the operating unit until all administrative remedies at the recipient level have been exhausted. See 15 CFR § 24.36(b). In such cases, the operating unit's review will be limited in accordance with the regulations set out at 15 CFR §§ 124.36(b)(11) and (12), as applicable. The operating unit review of a protest is limited to violations of:

(a) Federal law or regulations (violations of State or local law remain under the jurisdiction of State or local authorities); and

(b) The recipient's protest procedures or the recipient's failure to review a complaint or protest.

F. Disbursement of Grant Funds and Financial Administration.

Unless the award provides that payments will be made using the Department of Treasury's Automated Standard Application for Payment (ASAP) system or other automated payment system, after the initial disbursement has been made, the recipient may request interim disbursements by submitting Form SF-270, "*Request For Advance Or Reimbursement*" or Form SF-271, "*Outlay Report And Request For Reimbursement For Construction Programs*," as required for reimbursing the operating unit's share of eligible project costs. When project construction is complete, the final inspection has been completed, and the recipient has accepted the project from the contractor, the recipient can begin the closeout process by submitting the following documentation for review and approval to the respective operating unit:

1. A request for final disbursement on an executed Form SF-270 or SF-271;

2. A certificate of substantial completion, final acceptance report, or similar documentation;

3. Other documentation as may be required by the operating unit or other Federal authority.

G. Award Amendments.

In most instances, proposed modifications must be accomplished only through a formal amendment to the award on Form CD-451, "*Amendment to Financial Assistance Award*." Types of amendments may include:

1. Time Schedule (No Cost) Extensions. The recipient is responsible for compliance with the project development time schedule deadlines contained in the Financial Assistance Award. As soon as the recipient becomes aware that it will not be possible to meet the time schedule, it immediately should contact the operating unit to request a time extension. A time extension (no cost) must ordinarily be submitted to the Federal project officer at least 30 days prior to the end date of the award. A budget of the remaining funds should be included in the time extension request. The operating unit may inform the recipient that grant disbursements cannot be made while the recipient is not in compliance with the time schedule. The recipient's notice to the operating unit should contain the following information:

   a. An explanation of the recipient's inability to complete work by the specified date (e.g., a lengthy period of unusual weather delayed the contractor's ability to excavate the site; major re-engineering required in order to obtain Federal or state approvals; unplanned environmental mitigation required).

   b. A statement that no other changes to the project are contemplated;

   c. A budget for the remaining funds;

   d. A statement, supported by documentation where appropriate, demonstrating there is still a bona fide need for the project; and

e. A statement that no further delay is reasonably anticipated and that the project can be completed within the revised time schedule.

2. Budget Line Item Revisions. The tabulation of estimated project costs contained in the award is the controlling budget for the project. The recipient shall request the operating unit's prior written approval for any budget revision in accordance with 15 CFR parts 14 or 24 and the Terms of the Award, as applicable. The recipient shall notify the operating unit of any proposed deviations from budget and program plans.

3. Additional Funding. In accepting an award from an operating unit, the recipient normally agrees to fund any overrun(s). Additional funding for an approved project may not be approved. To be considered for approval, it must compete with other requests for scarce program funds. If an overrun occurs as a result of the construction contract bid opening, before the operating unit will accept a formal request for additional funds, it will be necessary for the recipient to furnish the following documentation to the operating unit:

a. A written statement from the recipient's architect/engineer giving reasons for the architect/engineer's professional opinion that redesign of the project within the approved scope or using new or additional deductive alternates cannot reasonably be expected to reduce the cost to within the available funds; and

b. A written statement from the administrative head of the recipient's organization justifying why the recipient cannot furnish the additional funds required, why non-Federal sources of funds cannot be secured, and, for EDA projects, certifying that the recipient's effective taxing and/or borrowing capacity have or has been exhausted.

The operating unit's acceptance of a request for additional funding does not indicate approval. Any further action by the recipient pending the operating unit's review of the request is at the recipient's risk.

4. Enforcement and Termination (for Cause or Convenience).

a. Enforcement.

(1) If a recipient materially fails to comply with any Term or Condition of the award, whether stated in a Federal statute, regulation, assurance, application for Federal financial assistance, or notice of award, the operating unit may take one or more of the actions, as set out in 15 C.F.R. §§14.62 or 24.43, as applicable.

(2) Costs resulting from obligations incurred by the recipient after notice by the operating unit of suspension or termination of the award are not allowable unless the operating unit expressly authorizes them in the notice of suspension or intent to terminate, or subsequently. Other costs incurred by the recipient during suspension or after termination that are necessary and not reasonably avoidable are allowable if:

(a) The costs result from obligations that were properly incurred by the recipient before the effective date of the suspension or termination, are not in anticipation of it, and in the case of termination, are non-cancellable; and

(b) The costs would be allowable if the award was not suspended or expired normally at the end of the funding period in which the termination takes effect.

(3) The enforcement remedies identified in 15 C.F.R. §§ 14.62 or 24.43, as applicable, including suspension and termination, do not preclude the recipient from being subject to debarment and suspension under Executive Orders 12549 and 12689 and the Department of Commerce's implementing regulations at 2 C.F.R. part 1326, "*Governmentwide Debarment and Suspension (Non-Procurement)*."

b. Termination (for Cause or for Convenience).

(1) Terminations for cause must comply with 15 C.F.R. §§ 14.61(a)(1) or 24.43, as applicable.

(2) Terminations for convenience must comply with 15 C.F.R. §§ 14.61(a)(2), (3) or 24.44.

H. Post-Construction Requirements.

1. Audit Requirements.

a. Certain recipients are subject to the audit requirements contained in OMB Circular A-133, "*Audits of States, Local Governments, and Non-Profit Organizations*" and the related *Compliance Supplement* (as revised from time to time). OMB Circular A-133 is issued pursuant to the Single Audit Act of 1984 (Pub. L. No. 98-502), as amended by the Single Audit Act Amendments of 1996 (Pub. L. No. 104-156; 31 U.S.C. §§ 7501-7507). OMB Circular A-133 requires that recipients that are nonprofit organizations, government agencies, Indian tribes, and educational institutions expending Federal awards of $500,000 or more during the recipient's fiscal year conduct an audit in accordance with the requirements of the Circular. If the recipient does not have a current audit performed in accordance with OMB Circular A-133, the operating unit shall advise the recipient of the procedure for securing the required audit.

b. Commercial and other organizations not subject to the OMB Circular A-133 audit requirements shall be subject to the audit requirements set forth in Section D.01.b. of the DOC Financial Assistance Standard Terms and Conditions (January 2013), unless a different audit requirement is imposed through special award condition(s). *See* 15 C.F.R. § 14.26.

c. The operating unit or the OIG may conduct audits of awards. The recipient will be notified in advance if it is selected for an audit. The recipient must permit the operating unit, the Comptroller General of the United States, the OIG, or any of their duly authorized representatives, access to any paper or electronic documents, books, correspondence, and any records (that are pertinent to a specific award to verify the recipient's compliance with the Terms and Conditions.

2. Property Management.

a. Section E.2.a(2)(a) of this chapter provides that all DOC construction awards include a term requiring that the recipient to agree that, for the estimated useful life of the facility funded with the

award, the project will be properly and efficiently administered, operated and maintained, for the purpose authorized by the award and in accordance with the Terms and Conditions of the award.

b. Estimated Useful Life. Unless the operating unit determines otherwise, the following ranges of estimated useful lives are considered reasonable for the listed assets:

(1) New buildings, 20 – 40 years.

(2) Rehabilitation or outfitting of existing buildings, 15 – 20 years.

(3) Improvements other than buildings, 15 – 20 years.

c. Security Interest. Section E.2.a.(2)(b) of this chapter provides that certain DOC construction awards include a term requiring the recipient to execute a security interest or other statement of the operating unit's interest in the property (the "Federal Interest"), acceptable in form and substance to the operating unit, that must be perfected and placed of record in accordance with local law, with continuances re-filed as appropriate. The Federal Interest secures compliance with matters such as the purpose, scope, and use of a project and it should be reflected by a recorded lien, statement, or other recordable instrument setting forth the DOC operating unit's property interest in a project (e.g., a mortgage, covenant, or other statement of the operating unit's real property interest in the case of a project involving the acquisition, construction, or improvement of real property and/or buildings). The statement should specify the estimated useful life of the project and should include but not be limited to the nature of the encumbrance and the procedure for disposition of the property when it is no longer needed for the originally-authorized purpose. The statement of the DOC operating unit's interest must be perfected and placed of record in the real property records of the jurisdiction in which the real property is located, all in accordance with applicable law. In view of the complexities and varying requirements for perfecting interests in real property from jurisdiction to jurisdiction, the DOC requires a written statement from a licensed attorney in the jurisdiction where the property is located, certifying that the Federal Interest has been protected as required under the award and in accordance with this general policy. A copy of the recorded lien, statement, or other recordable instrument must be attached to the attorney's certification.

When the recipient's executed certification and attached documentation is received by the operating unit, the operating may want to consider consulting with other legal counsel within the DOC (for example, FALD or EDA's Office of Chief Counsel) who have experience in dealing with real property construction grants, for assurance that the certification and attached documentation reasonably appear to adequately protect the Federal Interest.

d. Type of Federal Security Interest. Operating units should consider the nature of the recipient and the asset and the potential risk of loss to the government when determining the type of security interest that the recipient should be required to execute and record. State or local law may dictate the exact nature of the security interest to be perfected on behalf of the Federal Government. The operating unit is encouraged to consult with FALD counsel concerning the form and content of recipient security interest documentation and public filings.

3. Closeout Procedures.

a. After construction is complete and the project is closed out financially, the recipient has an ongoing responsibility to properly operate and maintain the project for its estimated useful life in accordance with its original purpose. The recipient also must comply with all applicable requirements including but not limited to ongoing compliance with Federal statutes, regulations, and Executive Orders prohibiting discrimination; applicable Federal laws prohibiting inherently religious activity; applicable environmental law and performance measures; and maintaining records to document such compliance which shall be made available for inspection by the operating unit or other government officials as required. When project construction and final inspection have been completed, and the recipient has accepted the project from the contractor, the recipient may begin the closeout process. The recipient should furnish the following to the operating unit:

(1) Confirmation of compliance with all Terms and Conditions of the Award, including all Special Award Conditions;

(2) All required financial and progress reports.

(3) A properly completed Form SF-429, including applicable attachments and supporting documentation.

(4) Confirmation of procurement of permanent insurance coverage for aboveground facilities.

(5) Confirmation that all changes to the project have been brought to the attention of the operating unit.

(6) Confirmation that provisions have been made for the retention for three years of all records pertaining to the award.

(7) A copy of the executed Certificate of Final Completion, Certificate of Occupancy, or similar documentation.

(8) Confirmation that as-built drawings have been received from the contractor or the architect/engineer.

(9) Confirmation that a copy of the recipient's currently valid OMB Circular A-133 audit has been submitted to the Federal Audit Clearinghouse and, if required, furnished to the operating unit. If an OMB Circular A-133 audit is required, but not available, the recipient must submit a plan to secure the required audit to the operating unit. The recipient must advise the operating unit if an OMB Circular A-133 audit is not required. If the recipient is not subject to OMB Circular A-133, the operating unit must confirm the recipient has submitted all required project-specific audits.

(10) Confirmation that no Davis-Bacon (if applicable) or local labor employment violations exist.

(11) Notification of any change, lien, mortgage, or other encumbrance relating to the ownership of the project.

(12) Notification of any unresolved contract/contractor disputes.

(13) Execution and recordation of a lien, mortgage, or covenant of purpose, use, and ownership in favor of the operating unit, if this is required under the Terms and Conditions of the award and has not already been accomplished.

(14) Confirmation that the recipient will maintain project facilities for the estimated useful life of the facility as determined by the operating unit, during which period the recipient may not alienate its ownership or change the use and purpose of the assisted facility without the operating unit's written permission.

b. Within 90 calendar days of project completion, the recipient shall submit all financial, performance, and other reports as required by the Terms and Conditions of the award.

c. Unless the operating unit authorizes an extension, the recipient shall liquidate all obligations incurred under the award no later than 90 calendar days after the acceptance of the project from the contractor or before the end of the funding period, whichever occurs earlier, as specified in the Terms and Conditions of the award.

d. The following documentation should accompany the recipient's final disbursement request when submitted to the operating unit, unless such documentation has been previously furnished, as applicable:

(1) Copies of all executed contracts, subcontracts (if claimed separate from the prime contract), contract change orders, vouchers, canceled checks, and other evidence of costs incurred necessary to substantiate the costs claimed on the operating unit award;

(2) A copy of the recipient's currently valid audit performed in accordance with OMB Circular A-133, if such an audit is required, and if the operating unit requires submission of the audit;

(3) Payroll forms, if any of the cost claimed is for work performed by the recipient's in-house work forces ("force account");

(4) Title opinions, legal descriptions, bills of sale, title records, etc., for any land cost being claimed;

(5) Specifics of any administrative costs being claimed.

e. The closeout of an award does not affect any of the following:

(1) The right of the operating unit to disallow costs and recover funds on the basis of a later audit or other project review;

(2) The obligation of the recipient to return any funds due as a result of later corrections or other transactions;

(3) Requirements for property management, records retention, and performance measurement reports; and

(4) Single or program-specific audit requirements per OMB Circular A-133 and the related "*Compliance Supplement*."

Appendix A: Applicable Regulations, OMB Circulars and Agency-specific Guidance

The following regulations, OMB Circulars, and forms are available from public libraries and may also be accessed at the following internet websites:

- OMB (www.whitehouse.gov/omb/), or
- The Government Printing Office Access site of the National Archives and Records Administration (www.gpoaccess.gov/cfr/index.html).

See also Chapter 2 of this manual:

- 2 C.F.R. part 1326, "*Government-wide Debarment and Suspension (Non-Procurement*)
- 15 C.F.R. part 11, "*Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs*"
- 15 C.F.R. part 14, "*Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit and Commercial Organizations*"
- 15 C.F.R. part 24, "*Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments*"
- 36 C.F.R. part 800, "*Protection of Historic Properties*"
- 48 C.F.R. part 31, "*Contract Cost Principles and Procedures*"
- OMB Circular A-87 (2 C.F.R. part 225), "*Cost Principles for State, Local, and Indian Tribal Governments*"
- OMB Circular A-133, "*Audits of States, Local Governments, and Non-Profit Organizations*"
- OMB Circular A-122 (2 C.F.R. part 230), "*Cost Principles for Nonprofit Organizations*"
- OMB Circular A-21 (2 C.F.R. part 220), "*Cost Principles for Educational Institutions*"
- OMB Standard Form 424D, "*Assurances – Construction Programs*," which references laws and regulations that may apply to particular awards
- OMB Standard Form SF 429, "Real Property Status Report," including Attachments A through C.
- Davis Bacon Wage Rates.

1. The following is available from EDA:

The Summary of EDA Construction Standards (with Exhibits) at www.eda.gov

2. The following are available from the NOAA.

- NOAA(Construction) Grants Policy Directive
- NOAA Grants Standard Operating Procedures – Construction Grants

The following are included as exhibits to this chapter below:

- Exhibit A – Sample Mortgage Cover Letter
- Exhibit B – Sample Mortgage
- Exhibit C – Sample Covenant Cover Letter
- Exhibit D – Sample Covenant

Exhibit A: Sample Mortgage Cover Letter

[Address of Recipient's Representative]

Re: Award No. XXXXXXXXXX—[Project Title]

Dear _____:

Please refer to Special Award Condition (SAC) No. ____, which is a term of the above- referenced Financial Assistance Award between the [operating unit] and the [recipient]. This term requires the recipient to execute a security interest or other statement of [operating unit's] interest in real property acquired or improved under the Award, acceptable in form and substance to [operating unit], which statement must be perfected and placed of record in accordance with local law, with continuances re-filed as appropriate.

Property that is acquired or improved, in whole or in part, with Federal assistance is held in trust by the recipient for the benefit of the project for the estimated useful life of the project, during which period the [operating unit] retains an undivided equitable reversionary interest in the property (the Federal Interest). The recipient may not dispose of, modify the use of, or change the terms of the real property title, or other interest in the project site and facilities without permission and instructions from [operating unit]. The Federal Interest secures compliance with matters such as the purpose, scope and use of a project. Where Federal assistance is used in the construction of [Insert construction purpose], such as the recipient's [Project Title], [operating unit] requires that the Federal Interest be protected through the execution of a first priority mortgage on the facility.

I am enclosing an "Amendment to Financial Assistance Award," Form CD-451, which includes the "Agreement and Mortgage" document that will satisfy the requirements of the above-mentioned SAC after the real property description has been attached, and the instrument properly executed and recorded. Please sign the Form CD-451 and return it to this office within the prescribed time, and forward the "Agreement and Mortgage" document to your counsel, requesting the following actions:

(1) Prepare property description of the land where the above project facility is being constructed, mark as Exhibit "A" and attach to the document;

(2) Approve the instrument in the place indicated thereon;

(3) See that the instrument is properly executed, recorded, and acknowledged; and

(4) Return a copy of the instrument to me being certain that the recording data is reflected thereon, along with a title opinion showing that [operating unit] holds a first priority lien position on the property encumbered by the mortgage.

Compliance with SAC _____ by the recipient is required prior to the disbursement of funds under this award. Please have your attorney contact _____, at _____should there be any questions. _____ may also be reached at the following e-mail address: _____.

Sincerely,

Grants Officer

Enclosures

Exhibit B: Sample Mortgage

AGREEMENT AND MORTGAGE

WHEREAS, the _____ (hereinafter "Mortgagor"), whose address is _____, has applied to, received and accepted from the United States Department of Commerce, [operating unit] (hereinafter "_____") an award in the amount of $_____ (hereinafter "Award Amount") pursuant to a Financial Assistance Award (hereinafter "Award Agreement") entered into by the parties on _____, and bearing [operating unit] Award Number _____; and

WHEREAS, pursuant to the application (hereinafter "Award Application") filed by Mortgagor requesting said award and pursuant to the Award Agreement, $_____ of the Award Amount is to be used for the [Project Title] for the purpose of making improvements consisting of _____on the real property described in Exhibit "A," attached hereto and made a part hereof (hereinafter the "Property"); and

WHEREAS, any transfer or conveyance of the Property by a recipient of a Financial Assistance Award must have the prior written approval of [operating unit]; and

WHEREAS, the aforesaid Award Agreement from [operating unit] provides the authorized purpose for which the Award Amount may be used while further providing, inter alia, that Mortgagor will not sell, mortgage, or otherwise use or alienate any right to, or interest in the Property, or use the Property for purposes other than, and different from, those purposes set forth in the Award Agreement and the Award Application made by Mortgagor, such alienation or use being prohibited by 15 C.F.R. Part 14 [15 C.F.R. part 24 or any other programmatic authority](hereinafter the "Regulations") as may be amended from time to time; and

WHEREAS, the value of said right to repayment under the terms of the Regulations is difficult to establish; and

WHEREAS, at this time, Mortgagor and [operating unit] desire to establish a value for [operating unit's] share of the Project in the event that the Property is used, transferred or alienated in violation of the Award Agreement, or the Regulations;

NOW THEREFORE, Mortgagor does hereby mortgage, warrant, grant and convey unto [operating unit], its successors and assigns, a first priority mortgage on said Property to secure a debt that shall become due and payable by Mortgagor to [operating unit] upon the use, transfer, or alienation of the Property, or interest therein, in violation of the Award Agreement or in violation of the Regulations, as such Award Agreement or Regulations may be amended from time to time, provided, however, that the lien and encumbrance of this AGREEMENT AND MORTGAGE shall terminate and be of no further force and effect _____ years from the date hereof, which period of years has been established as the useful life of the improvements to the Property. The amount of the lien, encumbrance and debt created by this Agreement shall be the amount determined by [operating unit], pursuant to the Regulations. Mortgagor does hereby acknowledge that said debt shall accrue and be due and payable upon any use, transfer, or alienation prohibited by the Award Agreement or the Regulations, as such may be amended

from time to time, and does, moreover, agree that such debt shall be extinguished only through the full payment thereof to the United States.

Mortgagor further covenants and agrees as follows:

1. Charges; Liens:

Mortgagor shall protect the title and possession of the Property, pay when due all taxes, assessments, and other charges, fines and impositions now existing or hereafter levied or assessed upon the Property and preserve and maintain the priority of the lien hereby created on the Property including any improvements hereafter made a part of the realty.

2. Hazard Insurance:

Mortgagor shall insure and keep insured all improvements now or hereafter created upon the Property against loss or damage by fire and windstorm and any other hazard or hazards included within the term "extended coverage." The amount of insurance shall be the full insurable value of said improvements. Any insurance proceeds received by Mortgagor due to loss shall be applied to restoration or repair of the Property damaged, provided such restoration or repair is economically feasible and the security of this Mortgage is not thereby impaired. If such restoration or repair is not economically feasible or if the security of this mortgage would be impaired, Mortgagor shall use said insurance proceeds to compensate [operating unit] for its fair share. [operating unit's] fair share shall be a percentage of said insurance proceeds equal to its award percentage in the total cost of the award program for which the damaged or destroyed real property was acquired or improved.

3. Preservation and Maintenance of the Property:

Mortgagor shall keep the Property in good condition and repair and shall not permit or commit any waste, impairment, or deterioration of the Property.

4. Inspection:

[operating unit] may make or cause to be made reasonable entries upon and inspection of the Property.

5. Condemnation:

The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taxing of the Property, or part thereof, or for any conveyance in lieu of condemnation shall be used by Mortgagor to compensate [operating unit] for its fair share. [operating unit's] fair share shall be the percentage of said condemnation proceeds equal to its award percentage in the total cost of the award program for which the condemned property was acquired or improved.

6. Forbearance by [operating unit] Not a Waiver:

Any forbearance by [operating unit] in exercising any right or remedy hereunder or otherwise affordable by applicable law shall not be a waiver of or preclude the exercise of any right or remedy hereunder.

7. Recording of Mortgage—Mortgagee's Copy:

Mortgagor shall record this AGREEMENT AND MORTGAGE in the County where the Property is located, thereby securing to [operating unit] an estate in the Property and any other place where recording is required under applicable law. Mortgagee shall be furnished a conformed copy of this Mortgage at the time of execution, and after recordation thereof.

8. Remedies Cumulative:

All remedies provided in this mortgage are distinct and cumulative to any other right or remedy under this Mortgage or afforded by law or equity, and may be exercised concurrently, independently or successively.

9. Notice:

Any notice from [operating unit] to Mortgagor provided for in this Mortgage shall be mailed by certified mail to Mortgagor's last known address or at such address as Mortgagor may designate to [operating unit] by certified mail to [operating unit's] address, except for any Notice given to Mortgagor in the manner as may be prescribed by applicable law as provided hereafter in this Mortgage.

10. Remedies:

Upon Mortgagor's breach of any covenant or agreement herein, [operating unit], its designees, successors or assigns may declare the entire indebtedness secured hereby immediately due, payable and collectible. This AGREEMENT AND MORTGAGE may be enforced by the Secretary of Commerce of the United States of America, or his/her designees, successors or assigns, by and through a foreclosure action brought either in a United States District Court, or in any State Court having jurisdiction, but such action shall not be deemed to be a waiver of the aforesaid debt or of any possible further or additional action to recover repayment thereof.

After any breach on the part of the Mortgagor, [operating unit], its designees, successor or assigns shall, upon bill filed or the proper legal proceedings being commenced for the foreclosure of this Mortgage, be entitled, as a matter of right, to the appointment by any competent court, without notice to any party, of a receiver of the rents, issues and profits of the Property, with power to lease and control the Property, and with such other powers as may be deemed necessary.

11. Governing Law; Severability:

This AGREEMENT AND MORTGAGE shall be governed by applicable Federal law and nothing contained herein shall be construed to limit the rights the [operating unit], its designees, successors or assigns is entitled to under applicable Federal law. In the event that any provision or clause of this instrument conflicts with applicable law, such conflict shall not affect other provisions of this instrument, which can be given effect without the conflicting provision, and to this end the provisions of this instrument are declared to be severable.

IN WITNESS WHEREOF, Mortgagor has hereunto set its hand and seal on this the ____ day of _____, 20___.

A completed duly recorded copy of this Agreement and Mortgage shall be forwarded to NIST.

_____
Mortgagor

By: _____

Its: _____

(The appropriate acknowledgement must be included for recording in the Mortgagor's jurisdiction.)

STATE OF)
)
COUNTY OF)

THIS INSTRUMENT WAS ACKNOWLEDGED BEFORE ME ON THIS

_____day of _____, 20____, by _____.

_____
Notary Public, State of

Exhibit C: Sample Covenant Cover Letter

[Address of Recipient's Representative]

Re: Award No. XXXXXXXXXX—[Project Title]

Dear _____:

Please refer to Special Award Condition (SAC) No. ____, which is a term of the above- referenced Financial Assistance Award between the [operating unit] and the [recipient]. This term requires the recipient to execute a security interest or other statement of [operating unit's] interest in real property acquired or improved under the Award, acceptable in form and substance to [operating unit], which statement must be perfected and placed of record in accordance with local law, with continuances re-filed as appropriate.

Property that is acquired or improved, in whole or in part, with Federal assistance is held in trust by the recipient for the benefit of the project for the estimated useful life of the project, during which period the [operating unit] retains an undivided equitable reversionary interest in the property (the Federal Interest). The recipient may not dispose of, modify the use of, or change the terms of the real property title, or other interest in the project site and facilities without permission and instructions from [operating unit]. The Federal Interest secures compliance with matters such as the purpose, scope and use of a project. Where Federal assistance is used in the construction of [Insert construction purpose], such as the recipient's [Project Title], [operating unit] requires that the Federal Interest be protected through the execution of a covenant of purpose, use, and ownership.

I am enclosing an "Amendment To Financial Assistance Award," Form CD-451, which includes the "Agreement and Mortgage" document that will satisfy the requirements of the above-mentioned SAC after the real property description has been attached, and the instrument properly executed and recorded. Please sign the Form CD-451 and return it to this office within the prescribed time, and forward the "Agreement and Mortgage" document to your counsel, requesting the following actions:

(1) Prepare property description of the land where the above project facility is being constructed, mark as Exhibit "A" and attach to the document;

(2) Approve the instrument in the place indicated thereon;

(3) See that the instrument is properly executed, recorded, and acknowledged; and

(4) Return a copy of the instrument to me being certain that the recording data is reflected thereon, along with a title opinion showing that [operating unit] holds a first priority lien position on the property encumbered by the mortgage.

Compliance with SAC _____ by the recipient is required prior to the disbursement of funds under this award. Please have your attorney contact _____, at _____should there be any questions. _____ may also be reached at the following e-mail address: _____.

Sincerely,

Grants Officer

Enclosures

Exhibit D: Sample Covenant

COVENANT OF PURPOSE, USE AND OWNERSHIP

THIS COVENANT OF PURPOSE, USE AND OWNERSHIP dated this _____ day of _____, 200__, by and between_____
_____
_____
whose address is_____
_____
(hereinafter with its successors and assigns called "Recipient"); and the [operating unit], UNITED STATES OF AMERICA, whose address is _____
_____
(hereinafter with successors and assigns called "____"):

RECITALS:

WHEREAS, Recipient submitted an application, designated as [operating unit] Award No._____, for financial assistance pursuant to _____ _____(hereinafter the "Act"); and

WHEREAS, by offer of Award, dated _____, [operating unit] offered to Recipient a financial assistance award in the amount of $_____(hereinafter called "Award Amount") to assist in financing
_____
_____
(hereinafter called "Project"); and

WHEREAS, said Project included acquisition of and/or specifically improving the real property described in Exhibit "A" attached hereto and incorporated herein
(hereinafter with all improvements called "Property"); and

WHEREAS, on _____, Recipient accepted the Offer
Of Award (hereinafter called "Award Agreement") subject to terms and conditions, pursuant to which Recipient covenanted and agreed to comply with the applicable
Requirements of 15 C.F.R. parts 14 or 24, as applicable [add any programmatic authority]; and

WHEREAS, the Award Agreement provides the purposes for which the Award Amount may be used and provides, inter alia, that Recipient will not sell, lease, mortgage, or otherwise alienate any right to or interest in the Property, or use the Property for purposes other than, and different from, those purposes set forth in the Award Agreement and the application made by Recipient therefore (hereinafter called "Project Purposes"), such alienation and use being prohibited by 15 C.F.R. parts 14 or 24, as applicable; and

WHEREAS, under the authority of the Act, [operating unit] is not authorized to permit Recipient to use the property for purposes other than Project Purposes or to lease, transfer, convey, mortgage or hypothecate the Project to any party without prior approval from [operating unit], unless [operating unit] is repaid its share of the market value of the Project, as set forth below;

WHEREAS, Recipient as owner of all or part of the real property described in Exhibit "A", attached hereto, agreed to record this Covenant in the appropriate office for the recording of public records affecting real property so as to constitute notice to all persons of any and all restrictions on title to and use of the Project and all or part of the real property described in Exhibit "A", attached hereto; and

WHEREAS, the _____
located at _____
is the proper office to record this covenant;

NOW THEREFORE, in consideration of financial assistance rendered and/or to be rendered by [operating unit] and of other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, and to assure that the benefits of the Project will accrue to the public and be used as intended by both [operating unit] and Recipient, Recipient hereby covenants and agrees as follows:

1. The estimated useful life of the project is _____years as determined by _____.

2. Recipient agrees that for the estimated useful life set forth above, Recipient will not sell, transfer, convey, or mortgage any interest in the real property acquired or improved in whole or in part with funds made available through this Award, nor shall Recipient use the Property for purposes other than the Project Purposes without the prior written approval of the Grants Officer,[operating unit], or his/her designee or successor. Such approval may be withheld until such time as Recipient first pays to [operating unit] the Federal share of the Property as provided in 15 C.F.R. parts 14 or 24, as applicable. The Federal share of the value of the Property is that percentage of the current fair market value of the Property attributable to the [operating unit's] participation in the Project (after deducting actual and reasonable selling and fix-up expenses, if any, incurred to put the property into condition for sale). The Federal share excludes that value of the Property attributable to acquisition or improvements before or after [operating unit's] participation in the Project and not included in Project costs.

3. Recipient further covenants that in the event the Property is used for purposes other than Project Purposes, or is sold, leased, transferred, conveyed, or mortgaged without the prior written approval of the Grants Officer, Recipient will compensate the Federal Government for the Federal share of the Property as described above and in 15 C.F.R. parts 14 or 24, as applicable.

4. Recipient further agrees that, as a prerequisite to accepting the disbursement of any Award funds by [operating unit], Recipient shall execute and place on record against the Property acquired or improved in whole or in part with the funds made available through this Award, this Covenant of Purpose, Use and Ownership. Recipient further agrees that whenever the property is sold, leased, or otherwise conveyed pursuant to 15 C.F.R. parts 14 or 24, as applicable, Recipient or the transferor shall add to the document conveying such interest a Covenant of Purpose, Use and Ownership. [operating unit] will in its sole discretion determine whether the Covenant is satisfactory. [operating unit] may

require an opinion of counsel for recipient that the Covenant is valid and enforceable according to its terms and has been properly recorded.

5. It is stipulated and agreed that the terms hereof constitute a reasonable restraint on alienation of use, control, and possession of or title to the Property given the Federal Interest expressed herein.

6. This covenant shall run with the land.

IN WITNESS WHEREOF, the recipient has hereunto set their hand as of the day and year first above written by their duly authorized officer. A completed duly recorded copy of this Covenant shall be forwarded to [operating unit]. (The appropriate acknowledgment must be included for recording in Recipient's jurisdiction.)

_____
Recipient

BY_____
Title

ATTEST:

By_____

Title_____

18. RESEARCH AWARDS (Reserved)

TO BE ADDED AT A LATER DATE

19. GUIDELINES FOR THE PREPARATION OF PUBLIC NOTICES ANNOUNCING THE AVAILABILITY OF FINANCIAL ASSISTANCE: SYNOPSES, FEDERAL FUNDING OPPORTUNITY (FFO) ANNOUNCEMENTS, AND *FEDERAL REGISTER* NOTICES

A. Background.

1. The Federal Financial Assistance Management Improvement Act of 1999 required the Office of Management and Budget (OMB) to direct, coordinate, and assist Executive Branch departments and agencies in establishing an interoperating unit process to streamline and simplify Federal financial assistance procedures for non-Federal entities. It also required each Executive Agency to develop, submit to the Congress, and implement a plan for that streamlining and simplification. One of the results of that plan was a commitment to develop a consistent funding announcement format across the many Federal agencies and programs. A standard announcement format with information content organized in a consistent way allows applicants quickly and efficiently to find the information they need, in order to decide whether a particular funding opportunity is of interest and to prepare an application. On June 23, 2003 OMB's Office of Federal Financial Management issued a *Federal Register* notice prescribing the standard format for all programs that use discretionary grants or cooperative agreements (68 FR 37370). On October 8, 2003 OMB published another notice (68 FR 58146) prescribing standardized format and location for synopses of funding opportunities.

2. It is the policy of the Department that:

   a. All FFOs will conform to the formats set forth in the Notices mentioned above, which are summarized in Sections B. and C., below.

   b. All Federal funding opportunities will be posted on the Grants.gov website, as described in Section C., below.

   c. Operating units which choose to also publish funding opportunity notices in the *Federal Register* will publish only the abbreviated *Federal Register* notice for the solicitation described in Sections D. and E., below.

B. Format of FFO

This document is designed to provide a uniform format for DOC operating units' announcements of funding opportunities under which discretionary awards of grants or cooperative agreements may be made. The format has two parts, the first part provides overview information, and the second part includes the full text of the announcement.

1. Overview Information.

   a. Required Overview Content. The following information must be displayed prominently, in the sequential order provided, and in a location preceding the full text of the announcement:

(1) Federal Agency Name(s) [Required]. Include the name of the Department, the Operating Unit and the specific office(s) within the unit (e.g., bureau, directorate, division, or institute) that are involved in the funding opportunity.

(2) Funding Opportunity Title [Required]. If there is a program name (within the broader title) that is different from the Funding Opportunity Title, you also could include that name here.

(3) Announcement Type [Required]. Indicate whether this is the initial announcement of this funding opportunity or a modification of a previously announced opportunity. If it modifies a previous announcement, provide the date of that announcement and identify the portions that are being modified. A modification does not need to include all of the sections of the full announcement text, only those sections being amended.

(4) Funding Opportunity Number [Required, if applicable]. An operating unit may assign unique numbers to, for example, identify specific competitions or programs. If you assign a number, you must include it. If it modifies a previous announcement, provide the number of that announcement.

(5) Catalog of Federal Domestic Assistance (CFDA) Number(s) [Required]. You also may wish to include the program name listed in the CFDA for each CFDA number that you give. CFDA numbers often include more than one program. Each program within a CFDA number must include additional numbers assigned only to that program, so that it can be distinguished from other programs listed under the same CFDA number.

(6) Dates [Required]. Include key dates that potential applicants need to know. Key dates include due dates for applications or Executive Order 12372 submissions, as well as any letters of intent or pre-applications. For any announcement issued before a program's application materials are available, this section must also include the date on which those materials will be released.

b. Optional, Additional Overview Content. Following the required overview information described above, the operating unit may present other information. Present any optional overview information in a sequential order that parallels the organization of the full text of the announcement. Examples of overview information that could help potential applicants decide whether to read the full announcement are: a concise description of the funding opportunity, the total amount to be awarded, the anticipated amounts and/or numbers of individual awards, the types of instruments that may be awarded, who is eligible to apply, whether cost sharing is required, and any limitations on the numbers of applications that each applicant may submit. You also may include other information that could later help applicants more quickly and easily find what they need (e.g., where one can get application materials).

c. Method of Presentation. An operating unit must include an executive summary of the announcement before the full text. The Executive Summary must include at a minimum the required overview information described above in paragraph a., as well as any additional information described in paragraph b. An executive summary should be short, preferably one page, with information in concise bullets to give an overview of the funding opportunity announcement.

2. Full Text of Announcement.

The full text of the announcement is organized in sections. The format indicates immediately following the title of each section whether that section is required in every announcement or is optional. 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 format's sections to describe the types of information to be included in that section of an actual announcement. If you wish to include information on a subject that the format does not specifically discuss, address that subject in whatever section(s) is most appropriate. For example, if an operating unit chooses to address performance goals in the announcement, it might do so in the funding opportunity description, the application content, and/or the reporting requirements. Similarly, when this format calls for a type of information to be in one particular section, an operating unit wishing to address that subject in other sections must use cross-references between the sections (there must be hyperlinks for cross-references in any electronic versions of the announcement). The sections required in the full text of the announcement are described below.

a. Funding Opportunity Description [Required]. This section contains the full programmatic description of the funding opportunity. It may be as long as needed to adequately communicate to potential applicants the areas or projects for which funding may be provided. It describes the operating unit's funding priorities (on a broader level than those which are to be used as selection factors and described in paragraph e., below) or the technical or focus areas in which the operating unit 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 must include citations for authorizing statutes and regulations for the funding opportunity.

b. Award Information [Required]. Provide sufficient information to help an applicant make an informed decision about whether to submit a proposal. Relevant information must include, to the extent available, the total estimated amount of funding that your operating unit expects to award through the announcement; the anticipated number of awards; the expected amounts of individual awards (which may be a range); the amount of funding per award, on average, experienced in previous years; and the anticipated start dates and periods of performance for new awards. This section also must address whether applications for renewal or supplementation of existing projects are eligible to compete with applications for new awards. In addition, it must indicate whether multi-year applications are being sought. This section also must indicate the type(s) of assistance instrument (i.e., grant, cooperative agreement, and/or other instrument) that may be awarded if applications are successful. If cooperative agreements may be awarded, this section must describe the “substantial involvement” that the operating unit expects to have. If procurement contracts also may be awarded, you must say so.

c. Eligibility Information. This section addresses considerations or factors that make an applicant or application eligible or ineligible for consideration. 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. It must be clear whether an applicant's failure to meet an eligibility criterion by the time of an application deadline will result in your operating unit's returning the application without review or, even though

an application may be reviewed, will preclude the operating unit from making an award. Key elements to be addressed are:

(1) Eligible Applicants [Required]. You must clearly identify the types of entities that are eligible to apply, using the list of applicants contained in 15 CFR §§ 14.1 and 24.1, unless a statute specifies other types of organizations. 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. You may not eliminate organizations that are eligible under the statute, or restrict competition to certain applicants, without providing justification. For example, if your program is limited to non-profit organizations subject to Section 501(c)(3) of the tax code, your announcement must 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 non-profit or local government organizations may apply. Eligibility also can be expressed by exception, (e.g., open to all types of domestic applicants other than individuals).

(2) Cost Sharing or Matching [Required]. You 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, you must explicitly say so). 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. This section must 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 an award is made. If cost sharing is encouraged, this paragraph must include a cross reference to the evaluation criteria or selection factor which will be used for assessment.

(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 award, whether you refer to them as "responsiveness" criteria, "go-no go" criteria, "threshold" criteria, or in other ways), you must clearly state them, or refer to the regulation or requirement that describes the restriction. 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. In this section you also must 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. Also use this section to address any eligibility criteria for beneficiaries or for program participants other than award recipients.

d. Application and Submission Information.

(1) Address to Request Application Package [Required]. You must inform potential applicants how to obtain all required application forms, or other materials necessary to apply (if this announcement contains everything they need, this section need only say so) under the funding opportunity. You may give an Internet address where they can access the materials. With respect to electronic methods for providing information about funding opportunities or accepting applicants' submissions of information, each operating unit is responsible for compliance with Section 508 of the Rehabilitation Act of 1973, as amended by the Workforce Investment Act of 1998. Since high-speed Internet access is not yet universally available for downloading documents, program offices should also identify 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) or 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 may refer to where those requirements may be found. This section also must address any preliminary submissions that the operating unit requires or encourages, either to facilitate its own planning or to provide potential applicants with feedback to help them decide whether to submit a full proposal. You must either include required forms or formats as part of this announcement or state where the applicant may obtain them.

In this section, you must specifically address content and form or format requirements for:

(a) Pre-applications, letters of intent, or white papers that your operating unit requires or encourages (see Section d.3), including any limitations on the number of pages or other formatting requirements similar to those for full applications.

(b) The application as a whole. For hard copy submissions, that could include any limitations on the number of pages, font size and typeface, margins, paper size, number of copies (original and 2 copies unless requiring additional copies has received Paperwork Reduction Act approval), and sequence or assembly requirements. If electronic submission is permitted or required, that could include special requirements for formatting or signatures. With respect to electronic methods for providing information about funding opportunities or accepting applicants' submissions of information, each operating unit is responsible for compliance with Section 508 of the Rehabilitation Act of 1973, as amended by the Workforce Investment Act of 1998.

(c) 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).

(d) Information that applicants must submit when requested by the operating unit prior to award. This could include evidence of compliance with human subjects requirements or information your operating unit needs to comply with the National Environmental Policy Act (NEPA). Official award notification can only be made by the Grants Officer.

(3) Submission Dates and Times [Required]. Your announcement 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 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 must say so. Note: 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 section B.1.“Overview Information” of this chapter).

For each type of submission that you address, indicate whether the submission is encouraged or required and, if required, any deadline date for submission (or dates, if the operating unit plans

more than one cycle of application submission, review, and award under the announcement). The announcement must state (or provide a reference to another document that states):

(a) Any deadline in terms of a date and local time.

(b) What the deadline means. Specify the date and time by which the operating unit 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).

(c) The effect of missing a deadline. Late applications are neither reviewed nor considered or, if waivers of deadlines are permitted, describe the basis for making such waivers.

(d) 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.

(e) This section also may indicate whether, when, and in what form the applicant will receive an acknowledgment of receipt.

You must consider displaying the submission date and time information 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.

(4) Intergovernmental Review [Required, if applicable]. If the funding opportunity is subject to Executive Order (EO) 12372, “Intergovernmental Review of Federal Programs,” you 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 EO 12372, you may wish to inform them that the names and addresses of the SPOCs are listed in the Office of Management and Budget's home page at: http://www.whitehouse.gov/omb/grants_spoc.

(5) Funding Restrictions [Required]. You 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). You also must tell applicants if awards will not allow reimbursement of pre-award costs.

(6) 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 must not be required to submit in more than one format and this section must 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, including room number or courier reception point. For electronic submission, this must include the URL (Grants.gov) or e-mail 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 that will be available in the event the applicant experiences technical difficulties. With respect to electronic methods for providing information about funding opportunities or accepting applicants' submissions of information, each operating unit is responsible for compliance with Section 508 of the Rehabilitation Act of 1973, as amended by the Workforce Investment Act of 1998.

e. Application Review Information.

(1) Criteria [Required]. This section must address the criteria that your operating unit 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 selection factors that are applied during the selection process, after the review process is completed. The intent is to give applicants visibility into the evaluation process so that they can make informed decisions when preparing their applications and so that the process is as fair and equitable as possible. The announcement must clearly describe all criteria, including any sub-criteria. If criteria or sub-criteria vary in importance, the announcement must specify the relative percentages, weights, or other means used to distinguish among them. For statutory, regulatory, or other preferences, the announcement must 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 must 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 so you must explain how it will be addressed in the evaluation process. 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 selection factors (program policy or other factors or elements), other than merit evaluation criteria, that the selecting official may use in selecting applications for award (e.g., availability of funding, geographical dispersion, program balance, funding priorities, or diversity). This section must also indicate who is responsible for evaluation against the merit criteria (e.g., peers external to the operating unit or Federal operating unit personnel) and/or who makes the final selections for award. If you have a multi-phase review process (e.g., an external panel providing assessments to internal operating unit personnel who make final recommendations to the selecting official) you must describe each of the phases. You also must include the number of people on an evaluation panel (minimum of 3). You may describe how the panel operates, the way reviewers are selected, reviewer qualifications, and the way that conflicts of interest are avoided. In addition, if you permit applicants to nominate suggested

reviewers of their applications or suggest those they feel may be inappropriate due to a conflict of interest, that information must be included in this section.

(3) Anticipated Announcement and 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 operating unit must include in this section information about the anticipated dates for announcing or notifying successful and unsuccessful applicants and for having awards in place. If applications are received and evaluated on a "rolling" basis at different times during an extended period, it is appropriate to give applicants an estimate of the time needed to process an application and notify the applicant of the operating unit's decision.

f. Award Administration Information

(1) Award Notices [Required]. This section must address what a successful applicant can expect to receive following selection. This section must indicate that the notice of 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 the operating unit will provide to unsuccessful applicants (See Chapter 8, Section J of this Manual). The award document must incorporate both the *Federal Register* Notice and the FFO into the award.

(2) Administrative and National Policy Requirements [Required]. This section must identify the usual administrative and national policy requirements your operating unit's awards may include. The Department will continue to publish a pre-award notification *Federal Register* notice containing this information. You must include a reference to the most current version of the Department's notice. Providing this information allows a potential applicant to identify any requirements with which it might 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 award.

(3) Reporting [Required]. This section must include general information about the type (e.g., financial or performance), frequency (minimum and maximum), and means of submission (paper or electronic) of post-award reporting requirements. Highlight any special reporting requirements for awards under this funding opportunity that differ (e.g., by report type, frequency, form/format, or circumstances for use) from what your operating unit's awards usually require. Performance reports or special data requests may require Paperwork Reduction Act approval.

g. Operating unit Contact(s) [Required]. You 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 you must consider approaches such as giving:

(1) Points of contact who may be reached in multiple ways (e.g., by telephone, fax, and/or e-mail, as well as regular/express mail).

(2) A fax or e-mail 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 operating unit funding opportunities for similar activities.

(3) Include Internet addresses for operating unit Web sites that may be useful to an applicant in understanding the program (NOTE: you must make certain that any Internet sites are current and accessible). With respect to electronic methods for providing information about funding opportunities or accepting applicants' submissions of information, each operating unit is responsible for compliance with Section 508 of the Rehabilitation Act of 1973, as amended by the Workforce Investment Act of 1998.

(4) Alert applicants to the need to identify proprietary information and inform them about the way the operating unit will handle it.

(5) Include certain routine notices to applicants (e.g., that the Government is not obligated to make any award as a result of the announcement or that only grants officers can bind the Government to the expenditure of funds).

C. Posting of FFOs on Grants.gov

The Office of Federal Financial Management (OFFM) has required Federal agencies to use the Grants.gov FIND module to electronically post synopses of funding opportunities under Federal financial assistance programs that award discretionary grants and cooperative agreements. The policy directive includes an attachment which contains the government-wide standard set of data elements to be used by Federal operating units when posting synopses at http://www.Grants.gov. The purpose of the Grants.gov FIND module is to provide potential applicants with (1) enough information about any funding opportunity to decide whether they are interested in viewing the full announcement; (2) information on one or more ways to obtain the full announcement (e.g., an Internet site, e-mail address or telephone number); and (3) one common Web site for all Federal grant opportunities searchable by key word, date, Catalog of Federal Domestic Assistance (CFDA) number or specific operating unit name.

1. The data elements/format attached to the policy directive and listed below are the government-wide standard for posting synopses at http://www.Grants.gov . Operating units must continue to post their full announcement at location(s) consistent with any applicable statutory requirements and the other provisions of this Chapter. The synopsis shall be posted with universal resource locator (URL) links through which the full announcement can be obtained. A URL link from the synopsis to the full announcement is not necessary for full announcements posted to Grants.gov because the synopsis and full announcement share the same URL. However, in this event the synopsis must indicate that the full announcement can be found at Grants.gov FIND.

2. Grants.gov FIND Data Elements:

a. The user ID of Federal operating unit representative who is authorized to post information to the Grants.gov site.

b. The password of Federal operating unit representative who is authorized to post information in the Grants.gov site.

c. The type of announcement to which the synopsis relates.

d. The operating unit's title for the funding opportunity (including program subcomponent names).

e. Funding opportunity number. The number, if any, that you assign to the announcement. For modification of a previously issued announcement, use the funding opportunity number of the earlier announcement. This is optional for the initial announcement, if a number is not assigned, Grants.gov will assign one.

f. Catalog of Federal Domestic Assistance (CFDA) number. At least one entry is required (you may list more than one).

g. Federal agency name. The name of the organization responsible for the announcement, including agency and as applicable, specific subcomponent (e.g., department, operating unit, bureau, directorate, or division).

h. Federal operating unit contact for electronic access problems. You must list the name of the person (e.g., webmaster) to whom potential applicants must refer questions if they cannot link from Grants.gov to the full announcement (this entry is distinct from that for the programmatic and other operating unit contacts who are listed in the full announcement). At least one entry is required.

i. E-mail address for Federal operating unit contact for electronic access problems.

j. Telephone number for Federal operating unit contact for electronic access problems.

k. Funding opportunity description. A concise description of the funding opportunity, designed to contain sufficient information for potential applicants to decide whether they are interested enough to read the full announcement.

l. Funding instrument type. Types of instruments that may be awarded (codes proved for system-to-system interface): Grant (G); Cooperative Agreement (CA); Procurement Contract (PC); Other (O). Note that if your announcement states that you may award procurement contracts, as well as assistance instruments, the announcement must be posted to both the procurement and assistance modules of Grants.gov FIND. Select all that apply (up to 4 codes).

m. Category of funding activity. This entry is designed to allow potential applicants to narrow their search to programs in the CFDA categories of interest to them. Note that the terms are defined in the CFDA. List all categories that apply. At least one entry is required and you may list as many as

needed. There is no default value. If the category of funding activity does not clearly fit in any listed category, you must select, “Other.”

n. Explanation of “other” category of funding activity. This is required if you select “other” as a category of funding activity, either by itself or in combination with one or more other categories.

o. Estimated total program funding. The total amount of funding the operating unit expects to make available for awards under this announcement.

p. Expected number of awards. The number of individual awards the operating unit expects to make under this announcement.

q. Ceiling, if any, on the amount of individual award. This is the maximum dollar amount for an individual award under this announcement that the awarding operating unit will not exceed. Enter a number or “none.”

r. Floor, if any, on the amount of individual award (i.e., if the awarding operating unit will not make smaller awards under any circumstances). Enter a number or “none.”

s. How to get full announcement. Hypertext stating that the full announcement is available at Grants.gov, plus any additional website, if the operating unit chooses to post full announcements at additional websites. This field must include the descriptor that precedes the URL for the full announcement (e.g., “Click on the following link to see the full text of the announcement for this funding opportunity”).

t. Electronic link to full announcement. The URL for any additional website where the full announcement may be posted.

u. Eligible applicants. Designed to help potential applicants narrow their searches to programs where they are most likely to be eligible, although they still must read the full announcement for details because eligibility may be further limited to certain subsets of applicants within categories. You must either select “99” for unrestricted or select all others that apply.

v. Additional information on eligibility. Explanatory information to provide any needed clarification of the meaning of “unrestricted” (e.g., all but foreign entities) to identify types of recipients meant by “all others,” or to provide further information about limitations for any other categories (e.g., for categories 6 and 20, a limitation to historically Black colleges and universities). Required if you select either category 25 or category 99 in “eligible applicants” field, Optional for additional information related to any category other than 99 or 25.

w. Cost sharing or matching requirement. Answer to the question: Is cost sharing or matching required? (Y or N).

x. Due date for applications. Date when applications are due (or latest date when applications accepted, if announcement has multiple due dates or is a general announcement that is open for a specified period with applications accepted at any time during that period). Note: This field is to contain the date when pre-applications, rather than applications, are due if an applicant must

submit a pre-application to be considered for an award. Required, if "Explanation of application due dates" field is not completed, optional otherwise.

y. Explanation of application due dates. Used by operating units wanting to post more information about due date(s) for potential applicants. For example, the field may be used to describe programs with multiple due dates or ones where applications are accepted at any point within a broad time window. The field also may be used to add information about the time when applications are field due (e.g., 5 p.m. EDT on the date given in the "Due date for applications" field). (Note: "Due date for applications" field is required if this "Explanation of application due dates" text is not completed).

z. Date of Grants.gov FIND posting. The month, day, and year when the operating unit wants the synopsis posted on Grants.gov FIND (e.g., you must build in delays to allow announcements to appear first in the Federal Register). The format is MM/DD/YYYY.

aa. Date for Grants.gov FIND to archive. If you provide no input, the default is 30 days after the date given in the "Due date for applications" field.

D. Publication in the *Federal Register*.

Should a DOC operating unit determine that, in addition to posting public notices of funding opportunities under which discretionary awards of grants and cooperative agreements may be made, it will also publish a notice in the *Federal Register*, the Department policy is that operating units will publish only the minimum information legally required under the Administrative Procedure Act (5 U.S.C. §§ 551-559), which includes the following information contained in the notice of funding opportunity:

1. summary description of the program;
2. deadline dates;
3. addresses for submission of applications;
4. information contacts (including electronic access);
5. amount of funding available;
6. statutory authority;
7. CFDA number;
8. eligibility requirements, including any cost sharing or matching requirements;
9. Intergovernmental Review requirements;
10. evaluation criteria used by the merit reviewers;

11. Selection procedures, including funding priorities/selection factors/policy factors to be applied by the selecting official; and

12. Administrative and National Policy Requirements. See paragraph E.2.g.(9), below, for specific language.

To the extent any of the above have been codified or otherwise published in the *Federal Register* a cross reference to the appropriate CFR or *Federal Register* publication may be substituted.

E. *Federal Register* Format Requirements.

Federal Register notices must be drafted in accordance with the guidelines delineated in the "*Federal Register* Document Drafting Handbook," which includes the submission requirements. In accordance with the handbook, notices must be organized as follows:

1. Heading. The headings must identify the billing code, issuing agency, the CFR title, docket number, regulation identification number (RIN) (if applicable) and subject matter of the document and must be presented in the following format:

a. Agency is always the Department of Commerce.

b. Subagency (if necessary). Identifies the operating unit which is issuing the notice.

c. Docket number

d. RIN (if applicable).

e. Subject Heading. Describes the content of the notice in a concise statement.

The following is an example of how the headings must appear in the notice:

DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
[Docket No. _____]
RIN _____
Financial Assistance for Oyster Disease Research]

2. Preamble. The preamble is the main focus of the notice and shall follow the Subject Heading. It arranges the content of the document into a uniform format by providing information on "who, what, where, when, and why." This allows the reader to review the document and assess its main points, determine whether it is of interest, and decide whether to respond to the notice. The preamble must be organized in the following format with the captions typed in all capital letters:

a. AGENCY. Identifies the operating unit issuing the document. The caption usually repeats the name of the operating unit as carried in the document's headings. When a subagency and operating unit name appear together, the subagency name is carried first and the agency name is represented by its commonly used acronym or other shortened expression (For example, Economic Development

Administration, Department of Commerce.) This caption may, in addition, identify a smaller organizational unit within the operating unit (for example, National Marine Fisheries Service, NOAA).

b. ACTION. Identifies the document category. This section must not be used to summarize the document. In this instance, the document category is a "Notice."

c. SUMMARY. Briefly describes in plain English what action is being taken, why the action is necessary, and the intended effect of the action. Any extensive discussion or details belong~~s~~ under the SUPPLEMENTARY INFORMATION section.

d. DATES. Contains any pertinent dates that the reader may need to know such as the closing dates for submission of preapplications (if applicable) and applications, anticipated number of days required to process applications, and date when awards are expected to be made. To provide the public reasonable notice and an opportunity to apply, there must be a minimum of 30 calendar days from the date of publication in the *Federal Register* and the closing date for receipt of applications (e.g., November 1 publication date and December 1 closing date).

[Note: Because the publication date of the notice will not be known until it is submitted to the Office of Federal Register, inserting specific calendar dates is discouraged; rather, allow the Office of Federal Register to calculate the dates by including the following where dates must appear in the notice: {Insert (number of days, but no less than 30) after the date of publication in the *Federal Register*}.]

e. ADDRESSES. Contains pertinent address(es) for the reader such as where to write to obtain an application package, where to send an application, or where to send correspondence for any other purpose.

f. FOR FURTHER INFORMATION CONTACT. Contains the name and telephone number of a person within the operating unit who can answer questions about the notice.

g. SUPPLEMENTARY INFORMATION. Contains detailed narrative information about the notice. Remember, as is illustrated in item (9), below, to the extent any of the following items have been codified or otherwise published in the *Federal Register* a cross reference to the appropriate CFR or *Federal Register* publication may be substituted. At a minimum, the following items must be included in this section:

(1) Authority. The statutory authority, EO, or any other legal authority that authorizes the program to provide financial assistance.

(2) Catalog of Federal Domestic Assistance (CFDA). The CFDA number(s) and program title(s).

(3) Program Description. A concise description of the goals and objectives of the program. The description must explain why Federal assistance is being provided, the intended beneficiaries of funded projects, and expected project results/ achievements.

(4) Funding Availability. The amount of funds available, expected amount of individual awards, and the purposes for which funds may be spent. If the publication of the notice precedes the passage of the appropriate fiscal year funding legislation, the announcement must state an

approximate amount and that funds will be contingent upon availability of funding. If a transfer of funds is anticipated, see Chapter 16, Section W. of this Manual.

(5) Eligibility Criteria. An explicit description of who is eligible to apply (e.g., States, universities, non-profit organizations, for-profit organizations, individuals, etc.), including any limitations imposed by the funding operating unit. Include here whether any cost sharing or matching is required to receive an award.

(6) Evaluation Criteria. The evaluation criteria that will be used in evaluating and selecting applications for discretionary funding consideration must be delineated. The criteria must be as specific as possible and the relative weight of each criterion must be given. If each criterion is of equal weight, the notice must so state. The criteria must provide an adequate basis for a review panel to review an applicant's capabilities and assess its likelihood of successfully performing under the award. Evaluation criteria must address such areas as adequacy of project plans, potential contribution to program objectives, key personnel qualifications, capabilities of the applicant organization, proposed costs, etc.

(7) Selection Procedures. Describe the process and procedures by which recommended applications will be selected. If the operating unit plans to select projects based upon funding priorities/selection factors/policy factors, those must be stated and an explanation must be provided as to how they will be applied to select projects out of the rank order established under the merit evaluations.

(8) Intergovernmental Review. [Insert applicable statement below]

(a) Applications under this program are subject to Executive Order (EO) 12372, "Intergovernmental Review of Federal Programs."

(b) Applications under this program are not subject to Executive Order (EO) 12372, "Intergovernmental Review of Federal Programs."

[Note: The Office of Legislative and Intergovernmental Affairs (OLIA) has the responsibility for implementing EO 12372.]

(9) Administrative and National Policy Requirements. This section must read as follows: “Department of Commerce Pre-Award Notifications for Grants and Cooperative Agreements, which are contained in the *Federal Register* Notice of December 17, 2012 (77 FR 74634), are applicable to this solicitation.”

(10) Administrative Procedure Act and Regulatory Flexibility Act. Prior notice and comment are not required under 5 U.S.C. § 553, or any other law, for rules relating to public property, loans, grants, benefits or contracts (5 U.S.C. §553(a)). Because prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. §553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis is not required and has not been prepared.

(11) The Supplementary Information must also address EO 13132 (Federalism) and EO 12866 (Regulatory Planning and Review).

(12) Information Collection. Notwithstanding any other provisions of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act, unless that collection displays a current valid OMB control number.

3. Signature. The signature of the person authorized to sign a notice submitted for publication in the *Federal Register* must be placed at the end of the document. The signature must be handwritten in ink, and the name and title of the person signing must be typed directly beneath the signature.

F. Coordination and Clearance.

1. Operating units are responsible for obtaining clearances of proposed FFOs before they are posted at Grants.gov and official Department websites. Those FFO announcements with funding that exceeds $100 million and announcements for new grant programs will be forwarded by FALD to the Office of the Assistant General Counsel for Legislation and Regulation (L&R) so that L&R may coordinate the review and clearance of those announcements with OMB. Proposed FFOs must be cleared by the Grants Officer, or designate. FALD is the final clearance authority. Clearance and/or comments by the Grants Officer or designate must be provided to FALD before it will clear an FFO.

2. Operating units are responsible for processing and coordinating the clearance of all *Federal Register* notices. Operating units must distribute all notices to OAM, the Electronic Government Team within the Office of Information Technology Policy and Planning, AGC/L & R, and FALD for comment and/or clearance. Once all comments have been reconciled, and clearances received from OAM and the Electronic Government Team, operating units must submit the notice to FALD for final Departmental clearance. Once FALD provides its clearance, the operating unit must upload the notice into the Department's Paperwork and Regulation Information Management Environment (PRIME) system, which is the primary tracking system for all notices and regulations. AGC/L&R will approve the notice submitted through PRIME and issue a docket number, which authorizes publication in the *Federal Register*. After issuance of the docket number by AGC/L&R, the operating unit is responsible for submitting the notice to the Office of the *Federal Register* for publication and to Congress and the General Accounting Office (GAO), as required by 5 U.S.C. 801 *et seq*. See Section G. of this chapter.

3. For those public notices of funding availability that are being published in the *Federal Register*, the operating unit is responsible for posting the synopsis and associated FFO to www.grants.gov, as described in section C.

G. Congressional Review of Final Rules and Interim Final Rules.

For purposes of Congressional review under Chapter 8 of Title 5, United States Code, operating units are required to submit each final and interim final rule to both Houses of Congress and the GAO before the final or interim final rule can take effect. Further, when an operating unit submits a final or interim final rule, the operating unit is also to provide GAO, and to make available upon request to each House of Congress:

1. A complete copy of the cost/benefit analysis of the rule, if any;

2. Information concerning the operating unit's actions under the Regulatory Flexibility Act;

3. Information concerning the operating unit's actions under the Unfunded Mandates Reform Act; and

4. Any other relevant information or requirements under any other law and any other EO.

Generally, for Federal assistance funding notices, this is translated into a form to each house of Congress and GAO, enclosing a copy of the *Federal Register* notice with each form; and with the GAO submission, also enclosing a copy of the EO 12866 determination of significant or not significant, if received. The final or interim final rule must be sent when sending the document to the Office of Federal Register, but must be received before the rule can be made effective. If you have any questions about the Congressional review procedures, please consult with the AGC/L&R. The AGC/L&R must be sent a copy of one of the signed forms. A sample checklist and form for this purpose can be accessed on the Internet at the following Web site: http://www.gao.gov.

20. MULTI-YEAR FUNDING PROCEDURES

A. General.

This chapter prescribes policies for incrementally funding multi-year awards when full funding of the complete project period is not available at the beginning of the project period. Multi-year funding allows Federal funds for a multi-year award to be provided in increments or by allotment, usually on an annual basis.

B. Multi-Year Awards.

Multi-year awards are awards which have a project period of more than 12 months of activity. Multi-year awards are partially funded when the awards are approved, and are subsequently funded in increments. The Department encourages long-range program planning for the award and administration of financial assistance actions. One mechanism for facilitating this goal is funding through multi-year awards. This particularly pertains to awards that support research projects that may span several years. One of the purposes of multi-year awards is to reduce the administrative burden on both the applicant and the operating unit. For example, with proper planning, one application can suffice for the entire multi-year award period. It is the Department's policy that the period of activity of multi-year awards should not exceed five years. Grants Officers should establish additional internal policies for consistent selection and approval of programs and awards that may be funded under these multi-year funding procedures.

C. Multi-Year Funding Principles.

1. Reliability and Predictability. Multi-year funding may be considered for programs or long-term awards where funding for the subsequent year(s) is anticipated but not provided at the time the award is approved and where the estimated budget for future funding periods can be forecast with some degree of reliability. These procedures should not be used for programs or long-term awards where the funding allocation may substantially change (either increase or decrease) from initial projections. Multi-year funding is provided by adding allotments of funds, usually on an annual basis, to extend the funding period within the previously approved project period.

2. Competition. Recipients of multi-year awards should be selected after full and open competition. However, projects under multi-year funding awards do not re-compete each year even though the awards may be funded annually. At the outset the Grants Officer would approve the award for a project period of more than one year (typically three to five years), and continuation amendments to add funding and extend the funding period (or add funding periods if time limited funds) are later approved with less administrative processing by the recipient, the Program Office, and the Grants Office. This feature - competing only once for a multi-year period of support - permits the grantee and the operating unit to more reliably plan for future years. The allotment of funding on an annual basis preserves the ability of the operating unit to discontinue support at points during the project period if funding is unavailable or the government's interest otherwise requires it.

3. Request for Applications. Program Offices must clearly identify in their Federal Funding Opportunity (FFO) announcements when multi-year funding is available under the program. The FFO must clearly state that funding for each year's activity is contingent upon the availability of funds, satisfactory performance, and is at the sole discretion of the agency. The FFO should solicit applications covering the entire multi-year period and must identify the amount currently available as well as the

amounts projected to be available in the future. Instructions for applying for a multi-year award must be contained in the FFO.

4. Exceptions. Not all programs or awards are good candidates for multi-year funding. Grants Officers must exercise good judgment in determining when to approve multi-year awards. Multi-year funding is not appropriate and a fully funded award must be used in the following circumstances:

a. The project is exclusively for construction, alterations or renovations, or acquisition of property;

b. At the time of award, the total period of DOC support for the project is planned to be less than 24 months.

5. Duration of Awards. The initial funding period and subsequent continuation amendments extending the funding period should usually be for 12 months but the initial funding period may vary from 12 months in order to provide for the continuation of the funding period at an advantageous date, such as the end of the grantee's fiscal year or to coincide with phases of the project contained in the proposal and budget. The applicant has more flexibility in carrying over funds throughout the entire project period when no-year appropriations are used to fund the award.

6. Amendments. The commitment to obligate the amount of available funding for subsequent funding periods with continuation amendments shall be clearly conditioned upon the availability of funds, satisfactory progress by the grantee, and the Program Office's determination that continued funding is in the best interest of the government.

a. An amendment to obligate prospective funding available shall be made on Form CD-451, "Amendment to Financial Assistance Award," prior to the expiration of each funding period. The Grants Officer shall execute the amendment after recommendation by the Program Officer that the performance under the current funding period is satisfactory and funds are available. The Program Officer should submit to the Grants Officer any continuation application with budget revisions, if applicable. A documented recommendation and certification of funding availability should be submitted at least 30 days prior to the expiration of the funding period.

b. The recipient should submit an amended application to the Program Officer for review and recommendation to the Grants Officer for approval before the end of the current funding period if the upcoming funding period will have a change in the scope of work or an increase in the funding level from that which was last approved. Otherwise, there is generally no requirement for the recipient to submit subsequent full applications under a multi-year project period.

c. Unobligated balances will automatically be carried over upon the continuation of the funding period. For unobligated balances, the SF-425, "Federal Financial Report," will be used as the basis for determining if there is any unobligated balance to be carried over at the end of the current funding period.

d. It is important to distinguish clearly between (1) stopping support of a project by not continuing the funding period with continuation amendments, and (2) termination of a grant. A grant gives the recipient legal authority to expend the funds awarded. The government may unilaterally terminate a grant only if the grantee has materially violated the grant's terms. The Department must give recipients due process prior to terminating a grant for violation of its terms. Except where required by statute, recipients have no right to a formal appeal process when a continuation is denied because neither the grant approval nor extension of a funding period or project period gives the recipient any legal entitlement to receive additional funds. Awards with multi-year funding will generally be funded in allotments adding to or continuing the funding period. The new award document (Form CD-450) initially obligates only the first allotment of funds. Within

30 days of the end of each funding period, the Program Officer will determine whether to recommend to the Grants Officer a continuation amendment, which adds funds to the award and continues the funding period.

D. Preparation of New Award.

Following are instructions for the preparation of Form CD-450, "Financial Assistance Award," and Special Award Conditions for awards with multi-year funding.

1. The CD-450. "Financial Assistance Award," for a multi-year award should be prepared as reflected in the guidelines and procedures and described below:

a. The total amount of funding shown in the upper right-hand corner of the Form CD-450 should reflect the amount, both Federal and non-Federal that is currently available for obligation. For example, a multi-year award with a total three (3) year budget of $3,900,000 (three equal annual increments of $1,000,000 as the Federal share of cost and $300,000 as the recipient share of cost) will show the portion of Federal funding that is currently available for obligation ($1,000,000) and at least the corresponding portion of the non-Federal amount.

b. The project period should reflect the entire multi-year period during which Federal sponsorship begins and ends.

c. In order to make it clear that future support is anticipated, the following shall be included in the special award conditions:

The project period and budget(s) incorporated into this award cover a ____-year period for a total amount of $_____ in Federal funds. However, Federal funding available at this time is limited to $_____ for this funding period. Receipt of any prospective funding is contingent upon the availability of funds from Congress, satisfactory performance, continued relevance to program objectives and will be at the sole discretion of the Department of Commerce. The Department of Commerce is not liable for any obligations, expenditures, or commitments which involve any amount in excess of the Federal amount presently available. The recipient will be responsible for any and all termination costs it may incur should prospective funding not become available. No legal liability will exist or result on the part of the Federal Government for payment of any portion of the remaining funds which have not been made available under the award. Notifications affecting funding or notice of non-availability of additional funding for prospective years will be made only by the Grants Officer. The amendment to obligate prospective funding available shall be made on Form CD-451, "Amendment to Financial Assistance Award," if at all possible prior to the expiration of each year's activities.

The project period for this action is _____ through _____.
The funding period for this action is _____ through _____. [generally first year]
The funding period for this action may be extended through _____.

[NOTE: Funds are available for obligation from the beginning of the award through the end of the funding period. With each year's amendment to add funds, the funding period is EXTENDED from the date of award, so that by the last year of the award, for example, the 5-year project period equals the 5-year funding period.]

2. An itemized budget must be incorporated into the award which includes the Federal and non-Federal share of funding that is <u>currently</u> available.

E. Preparation of Amendment(s).

Following are instructions for the preparation of amendments for awards with multi-year funding.

1. As prospective funding becomes available for extended funding periods, the Grants Officer shall notify the recipient by using the Form CD-451, "Amendment to Financial Assistance Award," of the obligation of prospective funding. This should be done prior to the expiration of the current approved funding period.

2. The Form CD-451, "Amendment to Financial Assistance Award" should be prepared as follows:

a. The amendment provides $_____ in Federal funds for the continued funding of this multi-year award for a total of $_____. The amount to be entered into the "Previous Estimated Cost" column should be the aggregate amount that has been obligated under the award. The amount to be entered into the "Add" column is the amount which is being obligated with this action. In addition, the following terms shall be included in the special award conditions:

This amendment provides $ _____in Federal funding for the continued funding of this multi-year award for a total of $ _____. Any commitments, obligations, or expenditures in excess of that amount of Federal funds will be made at the recipient's risk. The funding period for this amendment is extended through (date). Future funding is contingent upon the availability of funds, satisfactory performance on the current and/or previous award, continued relevance to program objectives, and is at the sole discretion of the Department of Commerce.

b. Work to be performed with this funding should correspond to that identified in the original application and proposal, with any approved revisions. The original application, proposal, and any approved revisions will be incorporated into the award by reference in this amendment.

3. If the work to be performed with the prospective funding does not correspond to that identified in the original application, along with the proposal and any approved revisions, the recipient should submit a request for approval of any revisions to the last approved budget and work to be performed. This request should be submitted to the Program Officer for approval by the Grants Officer. It should be noted that any revision to the work to be performed should not change the basic scope of work originally approved. Changes to the approved scope of work must be incorporated into an award by the Grants Officer in a formal amendment.

4. In the event that funding does not become available or the determination is made not to provide additional funding for prospective year's activities, the Grants Officer shall notify the recipient in writing prior to the expiration of the current funding period.

5. While the Department reserves the right not to provide all or a portion of a prospective year's funding, every effort should be made to minimize changes to the originally approved funding levels.

a. If funding levels increase over the amount stipulated in the special award condition(s), the recipient must submit a supplemental application for the amount of the increase along with a new budget and required certifications. [Caution: A significant increase in funding may lead to an unauthorized change in the scope of work.]

b. If funding levels are significantly decreased, the recipient must submit a request for budget revision to the Program Officer. [Caution: A significant decrease in funding could lead to an unauthorized change in the scope of work.] The Program Officer will review the request and make written notification to the Grants Officer who will notify the recipient of the Department's approval or disapproval. If the Grants Officer approves the revised (decreased) budget, the Form CD-451, "Amendment to Financial Assistance Award," shall be issued.