

**GRANT MANAGEMENT MANUAL FOR
THE NATIONAL NONPROFIT
ORGANIZATION RECREATIONAL
BOATING SAFETY GRANT PROGRAM**

**OFFICE OF AUXILIARY AND BOATING SAFETY
BOATING SAFETY DIVISION
U.S. COAST GUARD**





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Subj: GRANT MANAGEMENT MANUAL FOR THE NATIONAL NONPROFIT ORGANIZATION RECREATIONAL BOATING SAFETY GRANT PROGRAM

1. PURPOSE. This Manual provides a reference to the laws, regulations, and guidelines that govern the acceptance of National Nonprofit Organization Recreational Boating Safety grants and the administration of Federal financial assistance that is available. It will assist the Non Profit Organizations in applying for and administering Federal funds provided under the National Recreational Boating Safety Financial Assistance Program.
2. ACTION. USCG National Nonprofit Grant administrative personnel, grant technical managers, and grant recipients shall ensure that the provisions of this Manual are followed. Internet release is authorized.
3. DIRECTIVES AFFECTED. None.
4. CHANGES. When the laws and regulations applicable to this program are amended, notice of the change will be provided to holders of the Manual.
5. ENVIRONMENTAL ASPECT AND IMPACT CONSIDERATIONS. Environmental considerations were examined in the development of this Manual and have been determined to be not applicable.
6. FORMS / REPORTS. This publication contains examples of the forms that are used to apply for Federal financial assistance, request reimbursement, or submit financial status reports. Copies of these forms may be obtained from the Program Administrator.

JAMES A. WATSON/s/
Director of Prevention Policy

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3. 2 CFR Part 230 – Cost Principles for Non-Profit Organizations (Formerly OMB Circular A-122) C-1
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1. Privacy Act of 1974, 5 USC §552a

CHAPTER 1 INTRODUCTION

A. Purpose. This Grant Management Manual (hereinafter, Manual) is designed to provide a basic reference for the uniform and efficient administration of the United States Coast Guard's (hereinafter USCG) discretionary National Nonprofit Organization Recreational Boating Safety Grant Program.

B. Grantsmanship Methods. This Manual provides methods to maximize the National Nonprofit Organization Recreational Boating Safety Grant Program's ability to meet its public purpose by enhancing the quality of grant project deliverables in support of the National Non-Profit Organization Recreational Boating Safety Program Goals. The annual program cycle normally begins in April of the preceding fiscal year; it ends when all projects for the fiscal year have been closed out.

The Manual provides timetables, flow charts, schedules of key events, and milestones for conduct of the Program's annual cycle. It also includes definitions applicable to the Office of Management and Budget (OMB) grants management guidelines, and grant "do's and don'ts", where appropriate.

C. Applicability. The guidelines and provisions in this Manual apply to all personnel involved in administering the USCG's National Nonprofit Organization Recreational Boating Safety Grant Program. These guidelines are intended to document the grant process, establish clear process responsibilities and timetables, and foster more efficient, clear, and productive communication between the USCG's Grant Technical Manager (GTM) and the Grant Recipient Representative.

D. The Grant Process. The grant process described herein is comprised of three (3) discrete, but inter-related phases that are described in detail in Chapter 2:

1. Pre-Solicitation
2. Solicitation, Evaluation, and Award; and
3. Post-Award Grant Management and Follow-Up Activities.

E. Additional Considerations of the Grant Process. There are four (4) additional areas that should be considered during the grant process.

1. Although not a formal "phase," Follow-up Activities are included in order to wrap up any loose ends from the current fiscal year's program, and to initiate planning for the next fiscal year.
2. The overall process is designed to streamline the National Nonprofit Organization Recreational Boating Safety Grant Program operation. A key feature is to award grants not

later than 210 days after the Grant Application Package is released, which means that awards are to be announced mid May each year.

3. A second key feature of this Manual is that it incorporates statutory regulations and guidelines that govern Federal grant programs and processes.
4. Throughout the Manual, references will be found in various OMB documents, particularly the following:
 - a. 2 CFR Part 180, “*OMB Guidelines to Agencies on Government-Wide Debarment and Suspension (Nonprocurement)*”
 - b. 2 CFR Part 215 (OMB Circular A-110), *Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations (formerly OMB Circular A-110)*”
 - c. 2 CFR Part 230 (OMB Circular A-122), “*Cost Principles for Nonprofit Organizations (formerly OMB Circular A-122)*”
 - d. OMB Circular A-133, “*Audits of States, Local Governments, and Non-Profit Organizations*”

CHAPTER 2 GRANTS OVERVIEW

A. Purpose. The purpose of this Chapter is to explain the various types of Federal financial assistance available. A “grant” is one of three (3) types of Federal financial assistance mechanisms designed to procure services for Federal agencies. It is very important that the distinctions among the three legal forms used by the Federal Government are clearly understood by all participants. The three financial assistance instruments are:

1. Grants;
2. Cooperative Agreements; and
3. Procurement Contracts.

B. Definitions. The Federal Grant and Cooperative Agreement Act of 1977, as codified in 31 USC § 6301-6308 clarified many of the differences and distinctions between grants and cooperative agreements of financial assistance.

1. Grant Program Director is the Director of Prevention Policy.
2. Financial Management Specialist obligates funds for the Office of Boating Safety.
3. Division Chief oversees the Office of Boating Safety.
4. Branch Chief oversees the branch employees and reports to the Division Chief.
5. Grant Program Administrator manages the non-profit grants.
6. Grant Technical Manager is the technical expert assigned as the technical manager/representative to each grant and coordinates all grant activities with the grant recipient.
7. Grants. Grants **are** a broad form of assistance extended to state and local governments, and to non-governmental recipients, including nonprofit organizations. The grant/grant agreement can be defined as:

“A legal instrument used when the principal purpose of the financial assistance is the transference of funds to the recipient (recipient/awardee) in order to accomplish a public purpose of support or stimulation authorized by Federal statute.”

Grants **are not** mechanisms by which the Federal government acquires property or services for the direct use/benefit of the Federal government; direct purchasing of property or services is effected using the standard procurement contract. The Federal Grant and Cooperative Agreement Act specifies that a grant should be used when the principal purpose of the award is to support or stimulate recipient activity, but NO substantive

involvement by the government is anticipated. In situations where the principal purpose of the award is to support or stimulate recipient activity, but the parties anticipate substantive agency involvement in the project, a cooperative agreement is the appropriate award instrument. Contracts should be used whenever the principal purpose of the award is to acquire goods or services for the government's own use. The Act allows agencies to use contracts where grants or cooperative agreements might also serve, but grants and cooperative agreements cannot be used to procure goods and services for the government. If the award instrument is improperly selected, an agency could use a grant or cooperative agreement to evade the legal requirements, which apply to contracts but not to assistance awards.

Grants **are not** mechanisms that involve substantive involvement between the executive agency (i.e., Department of Homeland Security/United States Coast Guard (DHS/USCG)) and the recipient. When employing grants, the recipient signs a grant agreement and proceeds to implement the proposed work plan. The recipient is required to submit certain reports and follow certain procedures, which are expressly stated as provisions within the grant agreement. The grant awarding agency dictates those provisions, as well as other procedures, and provides grant oversight and monitoring, not substantive involvement.

2. Cooperative Agreement. The most significant distinction between a Grant and a Cooperative Agreement is the degree of involvement between the awarding agency and the award recipient (**substantive involvement**). Even though both instruments are tied to a public purpose defined by the authorizing statute, the Cooperative Agreement involves a far greater degree of **substantive involvement** by the awarding agency. Under the 1977 Act, referenced above, it is clear that grants and cooperative agreements are more closely related to one another than either is to the "Procurement Contract".

C. Grant Law. Awards made under the National Nonprofit Organization Recreational Boating Safety Grant Program are subject to all the principles of "grant law;" however, not all such principles apply equally to grant awards. Grants have specific public purposes defined by statute and refined by a series of OMB guidelines, executive orders and a variety of Federal regulations. Where applicable, such "laws" will be noted in this Manual.

1. The USCG's National Nonprofit Organization Recreational Boating Safety Grant Program utilizes four types of discretionary grants:
 - a. One Year Grant. For one year grants, depending on the project, the grant recipient **will** have up to one (1) year to complete the project. The USCG reserves the right to issue both grants and cooperative agreements, depending on the level of USCG involvement. A grant recipient may request a continuation of the grant; however, any continuation will be approved on a case-by-case basis. Any continuation will be subject to the needs of the government, satisfactory performance by the recipient, and the availability of funds.

- b. Competitive Grant. A competitive grant is a type of award under which the USCG solicits applications, evaluates the application for both program content and proposed costs. The evaluation and award is explained in detail in Chapter 4.
- c. Noncompetitive Grant or Fast Track Grant. This type of grant allows for accelerated award of selected yearly repetitive grants as well as taking advantage of specific opportunities. Procedures have been established to implement the awarding of noncompetitive grants/cooperative agreements on a case-by-case basis for recurring annual projects/events, which can only be carried out by one organization. These grants are for projects of less than \$20,000.00. The Division Chief submits recommendations and justifications for awards to the Grant Program Director for approval.

D. Prohibition of Advance Disclosure for Competitive Discretionary Grants. All USCG personnel are prohibited from advance disclosure of information pertaining to the National Nonprofit Organization Recreational Boating Safety Grant Program during the “funding round.” (i.e., the period between publication of a Grant Application Package in www.grants.gov and the Federal Register, and the USCG’s announcement of selected recipients/awardees.) These restrictions apply to all USCG employees and are summarized below.

1. Disclosure Prohibition Prior to Receipt of Applications. Before the deadline for submission of applications, USCG employees **are prohibited from disclosing**:
 - a. Identity of any applicant;
 - b. Number of applicants;
 - c. Relative standing of any applicant; and
 - d. Amount of assistance requested by any applicant.
2. Permissible Disclosures During the Award Phase. During the funding round, USCG employees **are permitted to disclose** the following:
 - a. Information related to requirements of the USCG Program(s), including unpublished policy statements; and
 - b. Technical assistance **provided that** such requirements or technical assistance statements are disclosed on a uniform basis to all applicants or potential applicants.
3. Disclosure Prohibitions During and After the Award Phase. During and after the funding round, USCG employees **are prohibited from**:
 - a. Authorizing prospective recipient(s) to begin work on the project until a formal grant or cooperative agreement is signed by both the recipient and the designated Chief, Boating Safety Division. **A letter of approval sent to a prospective recipient announcing the**

approval of a specific project does not constitute authorization to begin work on the project. Negotiations with the recipient will only begin after the grants have been approved by the Grant Program Director and recipient has been notified in writing.

- b. Releasing information to the public about the grant recipient organizations and funding amounts for that specific year until grant agreements have been signed by all recipients.

NOTE: Technical assistance is available and includes activities such as explaining and responding to questions about a particular program's regulations, defining terms in the Grant Application Package, etc.;

- E. National Nonprofit Organization Recreational Boating Safety Grant Program Background. The Federal Boat Safety Act of 1971 [recodified under Title 46, United States Code] gave the USCG new authority to deal with the large growth in recreational boating, including new programs for boat construction standards, boat defect correction oversight, boat operator requirements, and state financial assistance. The state financial assistance program was established to promote cooperative efforts between the USCG and states' boating safety programs.

The majority of the program's financial assistance funds are allocated to the states and eligible U.S. territories via a formula fixed in law. However, under the provisions of the Act 46 USC Part 131, up to 5% of the total state financial assistance available each year may be set aside for awards to eligible national nonprofit public service organizations to support National Recreational Boating Safety Program activities.

- F. Program Eligibility. For each Grant Application Package, the National Non-Profit Organization Recreational Boating Safety Program prepares a Grant Application Package for grant program applicants. Eligibility criteria – determined by statute and, therefore **non-negotiable** – include the following:
 1. Non-profit status which is defined as having, or being capable of obtaining an IRS tax-exempt classification (26 USC 510(c)(3)-1). For purposes of the National Non-Profit Recreational Boating Safety Grant Program, the organizational test focuses on entities that operate primarily for scientific, educational, service, charitable, or similar purposes in the public interest. A non-profit organization uses its net proceeds to maintain, improve, and/or expend its operation.
 2. Contracts or sub-grants to profit-making organizations are allowable; but, these activities must be explicitly spelled out in the grant project narrative and must be confined to administrative, clerical, or limited technical activities.
 3. Non-governmental status means that the applicant or offeror cannot be a public, or quasi-public, entity. (i.e., no municipalities, government, or governmental organization may apply).

4. Public service status means the organization exists primarily to serve the general public and fraternal, lobbying, or religious organizations are ineligible. Other types of organizations that are **excluded** from direct grant funding are colleges/universities, hospitals, and local units/affiliates of national organizations. These other organizations that are excluded from direct grant funding may, however, receive contracts or subgrants from the recipient organization.
 5. National in scope means that an organization has the ability to provide public boating safety benefits that are national in scope or dimension. A national membership base does not suffice – the organization’s **activities** must be nationwide in scope to be grant eligible. It is very important that the organization must be **national in scope of activity** in order to be eligible. Similarly, the lack of a nationwide membership does not preclude the organization’s eligibility. However, an organization that limits its membership to a specific geographical location, or confines its activities to a limited or local area, may not apply.
- G. Program Funding. Funds are appropriated annually by Congress and transferred from the Sport Fish Restoration and Boating Trust Fund. Depending on the specific annual appropriation, the amount of project grant funds that may be awarded each year totals approximately \$5 million dollars. Within the broad guidelines of 46 USC, Part 131, funds awarded under the National Nonprofit Organization Recreational Boating Safety Grant Program are discretionary. This Manual focuses on the USCG’s administration of this discretionary Grant Program.
- H. Auditing Requirements for Recipients. Recipients must comply with Federal audit requirements of OMB Circular A-133. A single audit must be conducted any time where the aggregate expenditures of Federal funds during the recipient’s fiscal year are \$500,000 or more.
- I. Grant Process Overview. The Grant Program process is comprised of a series of three (3) discrete, yet inter-related phases that address the major components of the process. Although not identified as a “Phase”, there are some “Follow-Up Activities” included with Phase III. Even though the Program is identified with a specific Fiscal Year, the process for each Federal Fiscal Year begins before, and may end after the actual Federal Fiscal Year start end dates.
- J. Phase I – Pre-Solicitation. Prior to issuance of Grant Application Packages, the critical task of pre-solicitation planning begins in early June. During this pre-solicitation planning period, discussed in detail in “Chapter 3, Phase I – Pre-Solicitation”, designated USCG staff:
1. Evaluate the prior year’s Program;
 2. Determine the Program objectives for the new fiscal year;
 3. Draft the Grant Requirement Descriptions, which will form the basis for proposal solicitation and evaluation.
- K. Phase II – Solicitation, Evaluation, and Award. The actual National Non-Profit Recreational Boating Safety Grant process begins mid summer with preparation for publication of a Grant

Application Package based on approved Grant Requirement Description from Phase I. The Grant Application Package is used to solicit applications/proposals by publication in www.grants.gov, www.uscgboating.org, and the Federal Register.

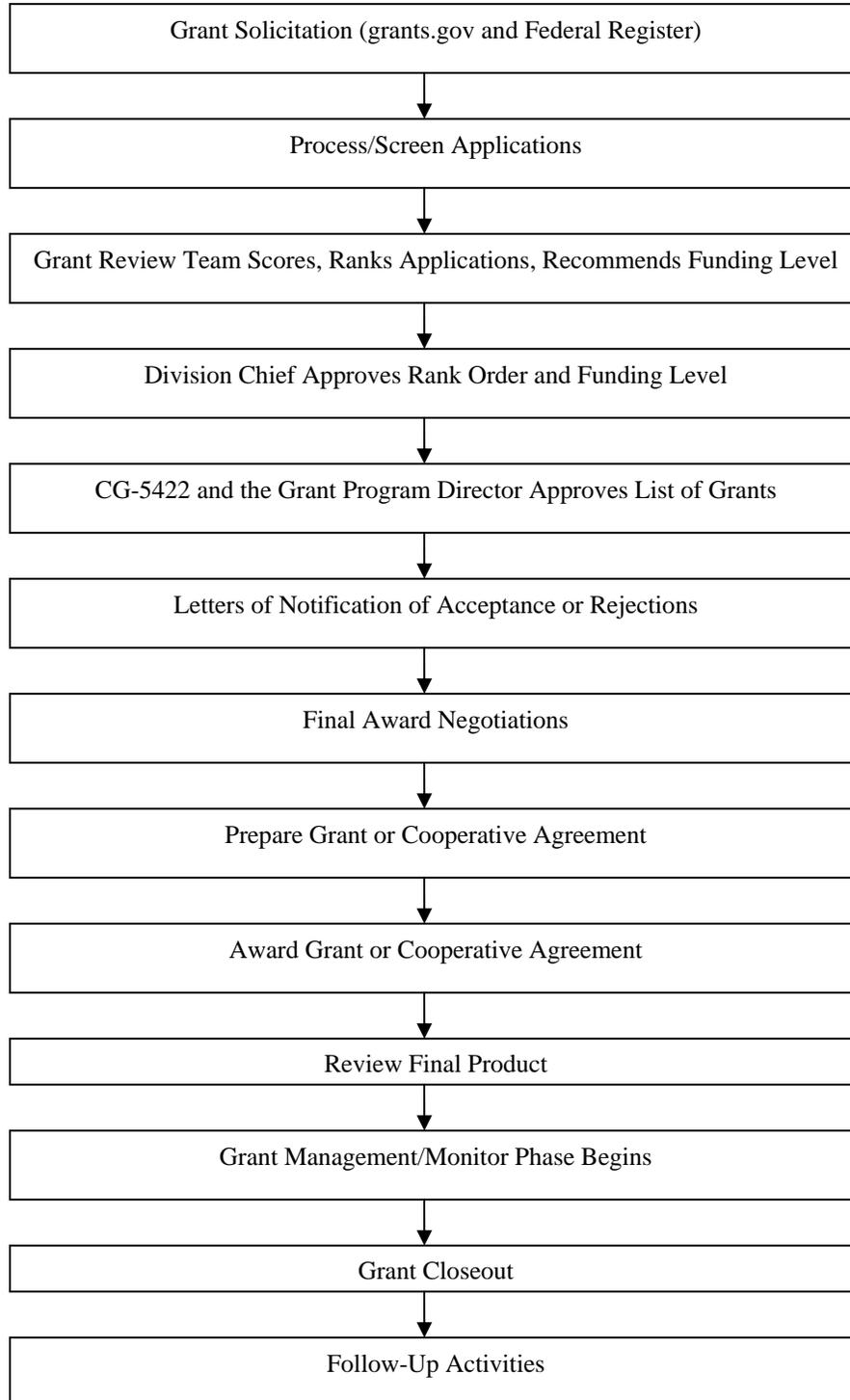
Grant applications/proposals are accepted during an approximate 100-day period, starting from the date of the Grant Application Package publication. Applications are processed using the procedures detailed in Chapter 4 – “Phase II – Solicitation, Evaluation, and Award” of this Manual. These procedures include receipt, screening, scoring, selection and approval for funding, grant agreement preparation and execution, and payment/reporting procedures. The Solicitation, Evaluation, and Award Phase ends approximately mid May, by which time all grants should be approved. This Phase is discussed in detail in Chapter 4.

L. Phase III – Post-Award Grant Management and Follow-Up Activities. This phase of the process begins with the USCG Grant Technical Manager establishing formal contact with the recipient in May to ensure a mutual understanding of the provisions of the grant agreement. Since most all of the one-year grants end September 30, all of the monitoring activities, including clarification of agreement provisions and reviewing reports will occur between May and September. Specific requirements and timelines are included in each grant agreement. The grant management process described in detail in Chapter 5, Chapter 5 - “Phase III – Post-Award Grant Management and Follow-Up Activities” is comprised of the following oversight actions:

1. Review negotiations regarding financial, program and product information;
2. Review grant agreement provisions;
3. Monitor grant activities, compliance, and expenditures;
4. Review recipient interim and final reports;
5. Grant project closeout procedures; and
6. Grant project follow-up actions.

A flow chart depicting the entire National Recreational Boating Safety Grants Program process is on page 2-7.

**FIGURE 2-1
NATIONAL RECREATIONAL BOATING SAFETY PROGRAM
GRANT PROCESS**



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CHAPTER 3 PHASE I – PRE-SOLICITATION

A. Purpose. The purpose of this Chapter is to explain the pre-solicitation process. The Pre-Solicitation Phase is designed to plan the annual National Non-Profit Organization Recreational Boating Safety Grants Program in a manner that facilitates its orderly and efficient operation. Even though this fiscal year-based program officially begins 1 October, planning starts mid summer. Initiating program planning early allows the National Nonprofit Organization Recreational Boating Safety Grant Program to meet its goal of having all grants awarded in sufficient time to make an announcement prior to mid May.

The following Phase I activities are conducted from on or about 1 June through 31 September.

B. Phase I – Pre-Solicitation

1. Step 1. Determine Program Objectives. This step ensures completion of pre-solicitation planning for the Grant Application Package and announcements of grant project areas of interest for the coming fiscal year in time for all grants to be approved by mid May.
 - a. The USCG Grant Program Administrator, CG-5422 and Branch Chiefs or representatives, review current year projects, and resolve problems and out-year funding issues, if any.
 - b. Review the Government Performance and Results Act (GPRA) goals and achievements.
 - c. Review program goals and achievements.
 - d. Review previous grant project impacts on GPRA and program goals and achievements.
 - e. Prioritize areas of effort to meet the GPRA and program goals and achievements.
 - f. Determine appropriate new initiatives.
 - g. Determine need to continue to prioritize the areas of effort. Prepare grant areas of interest and promulgate to staff to develop specific Grant Requirement Descriptions.
 - h. The Branch Chiefs prepare requirements statements of approved topics for next Federal Fiscal Year, including technical description.
 - i. The Branch Chiefs consider recommendations/input regarding suggested grant projects from various external sources.
 - j. The Boating Safety Division determines grant topics and emphasizes priorities.
 - k. In coordination with the Branch Chiefs, a subject matter expert is designated for each potential grant project.

2. Step 2. Determine Funding Availability. This step accurately determines the amount of funds.
 - a. If not already provided in Step 1, CG-831 determines National Recreational Boating Safety Program funds available for the fiscal year by preparing and forwarding an SF-132 to establish the National Non-Profit Organization Recreational Boating Safety Program Grant Account and provides copy to the Grant Program Administrator.
3. Step 3. Prepare Grant Requirement Description. This step ensures that detailed Grant Requirement Descriptions are prepared based on guidance from Step 1.
 - a. The USCG Grant Technical Managers prepare draft Grant Requirement Description for approved topics.
 - b. Drafts are reviewed by the Branch Chief; changes are made by the Grant Technical Manager and returned to respective Branch Chief for final approval and delivery to the Grant Program Administrator electronically. One of the goals of the National Nonprofit Organization Recreational Boating Safety Grant Program is to utilize grant information and material to the maximum extent possible. In attaining this goal, it is required that all information and material, which is created in an electronic format, be compatible with the USCG Standard Workstation and common operating environment.
 - c. The Grant Program Administrator reviews and provides copies to CG-5422 for review.
 - d. CG-5422 returns Grant Requirement Description to the Grant Technical Manager for modifications, if any; revision and approval process repeated as required.
 - e. Once Grant Requirement Descriptions are approved by CG-5422, the Grant Program Administrator initiates Phase II – Solicitation, Evaluation, and Award.

CHAPTER 4 PHASE II – SOLICITATION, EVALUATION, AND AWARD

A. Purpose. The purpose of this Chapter is to explain the Solicitation, Evaluation and Award Phase. The Solicitation, Evaluation and Award Phase is designed to solicit applications via a number of outlets; to review, evaluate, and score applications/proposals; and to select eligible applications for approval and award of grant monies – all in time to have the awardees announced on or about mid May.

B. Phase II – Solicitation, Evaluation, and Award

1. Step 1. Solicitation. This step generates solicitation announcements to elicit a sufficient number of qualified responses to meet the needs of the National Nonprofit Organization Recreational Boating Safety Grant Program established in Phase I, Step 1.
 - a. The Grant Program Administrator collects approved Grant Requirement Descriptions and prepares a Grant Application Package for grants.gov and the Federal Register, the Boating Safety website, and the Catalog of Federal Domestic Assistance (CFDA).
 - b. The Grant Program Administrator sends the Federal Register notice draft to CG-5422 for review and approval.
 - c. The Grant Program Administrator incorporates changes, if any, and repeats this step until the Grant Application Package is approved.
 - d. The Grant Program Administrator distributes final Commandant (CG-5422) approved Grant Application Package for publication and for inclusion on the Boating Safety website on or about 1 Nov.
2. Step 2. Application Period (Federal Register Publication + 100 days). During the Grant Application period, The Grant Application Package is updated to include all the latest references and instructions. The Grant Application Packages are mailed to the requestors who respond before the deadline. In an effort to enhance accessibility, the Grant Application Package will be provided on the Boating Safety website for applicants to receive the package over the Internet. Hard copies will be provided to those requesting them. The formal application period shall be for approximately one hundred (100) days after the Grant Application Package is published; applications received after that date will not be considered.

During this step, all applications that are received are logged in. An acknowledgment is sent to applicants who provide a self-addressed, stamped envelope. All activities in this step are performed by the Grant Program Administrator.

- a. Submission of Application Package by Grant Applicant. This application package from Applicant will include the following:

- (1) *SF-424, Application for Federal Assistance, as the face page or cover sheet.* In addition to a face page or cover sheet, applicants are encouraged to submit a *cover letter* with their application package. This letter may function either as a letter of transmittal or as a brief statement of the initial features of the proposal, providing the reviewer with an overview introduction to the application. Applicants are encouraged to include a *table of contents* with their letter.
- (2) *Program narrative and the budget.* In the program narrative, the applicant should include an in-depth explanation of the proposed project outcomes. Applicants must clearly identify the physical, economic, social, financial, institutional, or other problem(s) that require a solution, how the effectiveness of the project will be measured, timelines and milestones, and the results or benefits expected once that solution has been achieved. The need for assistance should be demonstrated and supporting documentation and testimonies from concerned interests must be included, as well as information on the applicant organization.

b. Elements of the Program Narrative. The elements of a well-constructed program narrative and their respective purposes are listed below:

- (1) The *needs assessment* discusses the existing situation and identifies the problems that the project will address, as well as the applicability to the National Recreational Boating Safety Organization strategic plan.
- (2) The *long term objectives* describe the broad policy and program objectives and goals that address the issues identified in the needs assessment. These objectives should extend beyond the current request for funding.
- (3) The *short term objectives* state the priority activities which the recipient intends to accomplish during the funding period, as well as identify the beneficiaries of the proposed program.
- (4) The *methodology* describes the program design, particularly the procedures, timetables, rationale for choosing a particular method, and the significance of the method chosen in relation to the short and long term objectives of the project. The methodology should also recognize the state of the art in a given functional area and address all of these factors with regard to the specific situation and needs of the proposed program.
- (5) The program narrative should also describe the methods the applicant will use to *monitor* the progress of the program and what measures of effectiveness will be used to *evaluate* the project results. (i.e., how the applicant will determine whether or not the program has achieved its stated goals and objectives and the extent to which achieving the goals and objectives can be attributed to the program.)
- (6) A schedule of quantitative monthly or quarterly accomplishments.

- (7) Accomplishments should be quantified to the extent feasible, and listed in chronological order. If the schedule of payments proposed in the financial plan is based on completion of specific functions, these accomplishments shall be consistent with the schedule.
- c. The Budget Narrative. The *budget narrative* explains the costs included in the budget. Please round amounts up to the next dollar and so state in budget justification. A detailed financial plan/proposal should include the following:
- (1) Delineate costs for proposed activities sufficient to establish their source.
 - (2) Separately list in the financial plan any expenses of \$1,000 or more. Items under \$1,000 can be consolidated by category.
 - (3) Specify proposed compensation rates for project participants and support staff while also identifying the type of appointment, term of appointment, and percentage of time devoted to project, hourly rate, and fringe benefits and at what percent. What is included in the fringe benefit rate also needs to be specified. List the percentage of any cost of living increase and what date it would be effective; specify the indirect cost rate, and who negotiated (what agency) and when, as well as provide a copy of the indirect cost rate negotiated agreement with the cognitive agency.
 - (4) The financial plan shall indicate the schedule of payments required from the USCG for the proposed work.
 - (5) List any payments proposed for contracted services and identify subcontractor.
 - (6) Delineate proposed travel (either domestic or foreign) and associated costs. Applicants should include information such as the places to be visited, the purpose, and anticipated dates of travel, from what city to destination city, how many days at location, how many trips, how many travelers, by what method (air, rail, vehicle) and what type of class the estimates were calculated, i.e., coach, business class or first class travel).
 - (7) Estimate any publication or distribution costs and state method for determining this estimate.
 - (8) Equipment – indicate whether it will be purchased or leased and state method for determining the cost.
 - (9) Provide line item for material and supplies and what is included in this cost.
 - (10) Consultant services, if any. Please explain in detail the hourly rate, the estimate of number of hours needed for the consultant, the identity of the consultant, and the activities proposed to be completed by the consultant.

- (11) Computer services, if not included as part of the indirect costs and state method for determining the cost.
- (12) Subcontracts. Identify and list all services to be performed by subcontractor and how this cost was determined.
- (13) Other extraordinary expenses. (See 2 CFR Part 230, formerly OMB Circular A-122, "Selected Items of Cost", for examples.)
- (14) If applicable, include the cost of a project audit.

d. Additional Information. Additional information or a financial plan must be included detailing by line item and narrative for each portion of the project. In addition, the name of the official representative authorized to sign for the organization must be provided. A statement that the organization is a national nonprofit public service organization, its IRS tax exempt organization number, and a copy of the IRS letter designating the organization as a 501(c)(3) tax-exempt organization must also be provided.

The program narrative should provide an overview of the organization, and introduce the proposed project staff. The overview of the organization should establish the qualifications of the organization seeking the funds, and may include such information as a statement of legal basis, prior record of achievement, an indication of cooperative relationships with other organizations or individuals (partners), and other resources available to the organization. The introduction of the proposed project staff should consist of a biographical sketch of each key person who will be working on the project, including their relevant experience and particular qualifications for the proposed project. A list of key personnel publications and a copy of their curriculum vitae or resume must also be included in the appendices.

The program narrative should also contain any special considerations that are relevant to the project, such as special permission requirements or clearances, and certifications. It should address concerns such as the special treatment of propriety or privileged information in the application, matters affecting individual privacy, provisions for intergovernmental review, and national security implications, if any.

State whether the applicant has any potential conflict with anyone in the USCG who would possibly be a reviewer. This would include a reviewer's spouse, parent, minor child, partner or any other person with which the reviewer would have a financial interest in the application. Does the applicant have a relationship with a potential USCG reviewer and/or a reviewer's spouse, parent, minor child or partner who would be expected to be the Principal Investigator or a member of the staff conducting the project? Does the applicant have any potential conflict where a potential reviewer and/or a reviewer's spouse, parent, minor child, or partner would serve as an officer, director, trustee, partner, or employee of the applicant, its parent, or subsidiary organization? Does the applicant have any potential conflict where a potential reviewer,

or their spouse, parent, minor child, or partner is negotiating prospective employment (or other similar association) with the applicant, its parent, or subsidiary organization? Does the applicant have any potential conflict where a potential reviewer, or their spouse, parent, minor child, or partner has a financial interest in the applicant, its parent or subsidiary organization? If any conflict exists, please identify the potential reviewer and identify what the conflict would be.

The final section of the program narrative is the *bibliography*, which must provide citations to any literature pertinent to the project or cited in the application.

- e. Application Review Process by Grant Program Administrator. The Grant Program Administrator logs the receipt of applications/proposals and continues to process and prepare applications for evaluation.
3. Step 3. Evaluation. This step ensures that, through a series of proposal reviews, only applications meeting all eligibility requirements, technical merit standards, and National Nonprofit Organization Recreational Boating Safety Grant Program objectives are submitted to the Grant Program Director for approval. This commitment ensures that the best proposals are considered for approval, and will minimize administrative delays at successive evaluation stages. At this stage:
 - a. The Grant Program Administrator verifies and corrects data in received applications. The Grant Program Administrator may request missing/incomplete data from grant applicant; if data is later received, accepts application.
 - b. The Grant Program Administrator conducts initial grant application threshold review to determine eligibility and completeness of package. Applications which meet threshold review are then given a thorough cost review using a checklist, performing budget and cost analyses to determine the necessity, reasonableness, and allowable costs in applicant budgets.
 - c. The Grant Technical Manager and/or Branch Chief will determine the applicant's ability to perform the grant activities with the funds requested, as well as estimating possible future costs and needed changes in the grant's budget. The Grant Program Administrator will provide input to the Grant Technical Manager and/or Branch Chief on applicant's ability to perform the grant activities based on the Grant Program Administrator's knowledge of applicant's previous history, audit clearinghouse information, and financial reporting.
 - d. The Grant Program Administrator will survey prospective recipient's financial business management systems. The Grant Technical Manager will survey the business management practices.
 - e. The Grant Program Administrator will monitor the objective review process to ensure that all requirements have been carried out.

- f. The Grant Program Administrator will provide budgetary information and will ensure technical information is provided to all applicants on an equal basis. The Grant Technical Manager will provide technical information to the Grant Program Administrator.
 - g. The Grant Program Administrator will notify applicant of programmatic deficiencies in the application, as identified by the reviewer(s).
 - h. The Grant Program Administrator will support the independent review panels as necessary to facilitate process.
 - i. The Grant Program Administrator provides eligible proposals to the Branch Chiefs.
 - j. The Branch Chiefs, Subject Matter Experts (SMEs), and outside reviewers read and score applications using the technical/cost review form (Evaluation Guidelines and Scoring for National Non-Profit Grants). If there are any questions raised during this review process in regard to the application, the questions will be provided to the applicant by the Grant Program Administrator with instructions to answer the questions and return their responses within 7 working days.
 - k. The Grant Program Administrator ranks applications by score. The Grant Technical Manager/Branch Chief determines whether USCG will have substantial involvement in project and advises the Grant Program Administrator on what applications, if approved, would be grants versus cooperative agreements.-
 - l. After receiving the information from the reviewers, the Grant Program Administrator prepares a ranking list for presentation to the Division Chief along with the recommended funding requests.
 - m. The Division Chief validates the scores and determines the funding level for those grants recommended for award. The validated scores and recommended funding levels are forwarded to the Grant Program Director for approval.
 - n. The Grant Program Director either approves or disapproves the recommendation.
4. Step 4. Pre-Award. The effectiveness of the National Nonprofit Organization Recreational Boating Safety Grant Program can be enhanced by having the ability to reimburse recipients for pre-award costs such as travel for pre-award discussions, which serve to assure the best and most timely product. For some grant areas of effort, it is necessary to meet with the prospective recipient directly regarding the proposed project, if needed. The recipient usually travels to the Washington D.C. area to meet with the appropriate Branch Chief and Grant Technical Manager regarding questions or recommendations for the project. These costs are incurred prior to the actual award. It would be beneficial for the recipient to have these costs covered as part of the grant rather than the recipient having out-of-pocket expenses associated with the particular grant. At times, there are other costs, which may be covered specifically under the “pre-award costs.” Any pre-award costs

would be reviewed and approved by the Division Chief, on a case-by-case basis with justification provided for the approval.

2 CFR Part 215.25(e) Revision of Budget and Program Plans, states: *“Except for requirements.....Federal awarding agencies are authorized, at their option, to waive cost-related and administrative prior written approvals required by this part and OMB Circulars A-21 and A-122. Such waivers may include authorizing recipients to do any one or more of the following: (1) Incur pre-award costs 90 calendar days prior to award or more than 90 calendar days with the prior approval of the Federal awarding agency. All pre-award costs are incurred at the recipient’s risk (i.e., the Federal awarding agency is under no obligation to reimburse such costs if for any reason the recipient does not receive an award or if the award is less than anticipated and inadequate to cover such costs.)”* (This was formerly in OMB Circular A-110)

The following provisions will be stipulated regarding pre-award costs: *“A recipient may, at its own risk, incur obligations and expenditures to cover costs prior to the effective date of an award provided the following criteria are met: the costs concerned are considered necessary to the conduct of the project, the costs are allowable under the potential award, and when required for specific expenditures or activities, USCG prior approval was obtained in writing. Costs must be incurred within 90 days prior to the effective date of the award. In allowing the applicant/recipient this flexibility, the USCG expects the recipient to be fully aware that such borrowing against future support must not impair its ability to accomplish the project objectives in the approved timeframe or in any way adversely affect the conduct of the project. Additionally, the incurrence of costs prior to the award of a grant imposes no obligation on the Federal Government to either make the award or increase the amount of the approved budget.”*

5. Step 5. Award. This step ensures that applicants are notified of selection or non-selection, funding procedures are initiated, grant and/or cooperative agreements are executed, and request for clarification, if any, are properly handled.
 - a. The Grant Program Director approval memo is returned to the Grant Program Administrator.
 - b. The Grant Program Administrator notifies the Branch Chiefs. The Branch Chiefs assign the Grant Technical Managers for the grants, and the Grant Technical Managers are notified of selections.
 - c. Approved applications are forwarded to the Grant Program Administrator for preparation of grant approval letters (Notification of Selection letter). The Grant Program Administrator notifies selected awardees.
 - d. The Division Chief signs grant approval letters to recipient.

- e. The Grant Program Administrator prepares letters for the Division Chief's signature to non-selected applications. The Division Chief signs and the Grant Program Administrator sends letter of non-award.
- f. The Grant Technical Manager contacts recipient and resolves any negotiation issues in writing. (See Step 1 in Chapter 5 "Grant Technical Manager/Recipient Interface for Grant Technical Manager" responsibilities.) The Grant Technical Manager and/or Division Chief would have already determined whether the USCG will have substantial involvement in the project. If substantial involvement is anticipated on the part of the USCG, the Grant Technical Manager writes the responsibilities of this involvement and provides this electronically to the Grant Program Administrator for inclusion in the Cooperative Agreement.
- g. The Grant Technical Manager returns the negotiated package to the Grant Program Administrator.
- h. The Grant Program Administrator prepares and sends the grants and/or cooperative agreements to the recipients for signature.
- i. The Grant Program Administrator forwards the returned, signed grants and/or cooperative agreements to the Division Chief for signature (start date of grant).
- j. The Grant Program Administrator sends a memo to the Financial Management Specialist to obligate the funds.
- k. The Grant Program Administrator sends a photocopy of the executed agreement to USCG Finance Center to set up payments.

NOTE: The Financial Management Specialist will not obligate funds for the established accounts **until** copies of the signed and executed agreements are provided. Therefore, no Requests for Advance or Reimbursement will be processed until the copies are provided. Funds **must** be obligated before the end of the Federal fiscal year in which the funds were appropriated.

CHAPTER 5 PHASE III – POST-AWARD GRANT MANAGEMENT AND FOLLOW-UP ACTIVITIES

A. Purpose. The purpose of this Chapter is to explain the post-award grant management and follow-up activities. The Post-Award Grant Management and Follow-Up Activities Phase is to ensure that grants are managed with USCG goals and objectives in mind, and in accordance with all pertinent statutes, regulations, and guidelines. In addition, grants are to be closed out promptly, properly, and with the positive results therefrom given the widest distribution to potential users. Further, the planning process for the subsequent fiscal year should begin on or about mid summer.

B. Phase III – Post-Award Grant Management and Follow-Up Activities

1. Step 1. Grant Technical Manager/Recipient Interface. It is important to establish an official working relationship between the USCG's Grant Technical Manager and the recipient soon **after** signing the grant agreement. It is in the best interest of the recipient not to begin work on the project until meeting or consulting with the Grant Technical Manager in order not to incur any unnecessary expense. To facilitate this, a conference call or meeting as appropriate should be held as defined in the grant agreement.
 - a. The Grant Technical Manager and recipient review the grant and/or cooperative agreement provisions, milestones, products, payment schedules, etc.
 - b. The Grant Technical Manager/Grant Program Administrator resolve remaining issues; the Grant Technical Manager authorizes the start of project work.
 - c. The Grant Technical Manager consults with the Branch Chief and possibly the Division Chief regarding any issues that cannot be resolved. If unresolved, the Division Chief advises the Grant Program Director of any potential, necessary action, (i.e., termination) and must obtain approval from the Grant Program Director.
 - d. The agreement may be terminated if resolution cannot be reached; the Grant Program Administrator is to coordinate with the USCG Legal Office before taking action. The agreement cannot be terminated until the USCG Legal Office has advised the Office of Boating Safety on process and vehicle to be used to terminate, (i.e., termination, suspension or debarment). A termination letter must be prepared for the Grant Program Director's signature.
2. Step 2. Progress Review/Payments. This step ensures that the project is performed according to the technical and administrative provisions of the grant and/or cooperative agreement, and that progress payments for satisfactory work are made in a timely fashion. **NOTE:** The recipients must submit an SF-270, "Request for Advance or Reimbursement", for their payment request. If a recipient requests a reimbursement instead of an advance, according to 2 CFR Part 215.22, Uniform Administrative Requirements, (formerly OMB Circular A-110), it states that "*within 30 days after receipt of a proper billing for*

reimbursement, the grantor agency must pay the recipient.” Also, recipients meeting the administrative requirements are to be paid in advance. Awarding agencies may not withhold payment for proper charges by recipients. Payment withheld from a recipient for failure to comply, but without suspension of the grant, must be released upon compliance. In accordance with the U.S. Treasury mandate, **all** payments will be made via electronic funds transfer to the recipient’s financial institution. To ensure timely payment:

- a. The Grant Technical Manager will monitor technical progress, progress reports, and request for progress payments in accordance with the provisions of the agreement. The Grant Technical Manager will also conduct site visits, when warranted, and review progress reports, continuation applications, and submitted publications to evaluate capability and monitor performance of the recipient and to assess compliance with laws, regulations, and policies.
- b. The Grant Technical Manager and the Branch Chief will recommend to the Division Chief whether or not to approve continuation applications for award. The Grant Technical Manager will consult with and assist the recipient concerning programmatic or technical matters.
- c. The Grant Program Administrator will evaluate and monitor the business management capability and performance of recipients and the internal operating procedures associated with the business management aspects of the grant process through reviews of performance reports, financial status reports and recipient correspondence.
- d. Site visits will be made to recipient organizations when authorized by the Division Chief and/or Branch Chief to monitor the financial and business management capability as well as the performance of each organization.
- e. The Grant Program Administrator will prepare notices of grant award (grant approval letter), amendments to notices of grant award, and notices of suspension and termination of award.
- f. The Grant Program Administrator will maintain the official files for individual grant awards.
- g. The Grant Program Administrator will assist the Grant Technical Manager in resolving audit findings involving grant programs and recommend comments to the Division Chief on the agency position prior to notifying the recipient.
- h. The Grant Technical Manager recommends payment of a recipient request, or places a hold on payment. The Grant Technical Manager must process the SF-270, within 48 hours of receipt (weekends and holidays excluded) or submit a memo to the Grant Program Administrator for reason(s) for holding payment request. If the Grant Technical Manager approves the payment, he/she then sends an e-mail to the Grant Program Administrator requesting payment. Once the Grant Program Administrator receives authorizing e-mail for payment, the Grant Program Administrator will send a

memo to the USCG Finance Center within the 48 hour period of receipt and submit it via fax authorizing payment. The Grant Program Administrator retains the original e-mail and SF-270 in the master grant file.

- i. The Grant Technical Manager will resolve issues causing a “hold” on a payment. If the issues cannot be resolved, the Grant Technical Manager will recommend terminating the agreement. The Grant Technical Manager will advise, via e-mail, the Grant Program Administrator of recommendation. The Grant Program Administrator will consult with the Branch Chief (and if necessary the Division Chief) after coordination with the USCG Legal Office. The Grant Program Director has approval authority for all terminations.
 - j. The Grant Program Administrator will send disbursement requests to the USCG Finance Center for the Grant Technical Manager-approved progress payment requests.
 - k. The Grant Technical Manager will continue to monitor recipient performance.
 - l. The Grant Technical Manager will review requests for changes in project direction or management or for rebudgeting. Except where USCG approval must be issued by the Grant Program Administrator, the Grant Technical Manager will furnish USCG approval or disapproval in writing to the Recipient’s Project Director, with copies to the recipient authorized organizational representative and the Grant Program Administrator.
 - m. The recipient will monitor the performance of the project, program, subaward, function or activity supported by the award to ensure time schedules are met, other performance goals are being achieved, the terms of the grant agreement are being met, and sound management practices and organizational policies are being used.
 - n. The recipient has full responsibility for the conduct of the project or activity supported under an award and for adherence to the award conditions. To carry out responsibilities for monitoring project performance effectively and for adhering to grant and cooperative agreement terms and conditions, each recipient organization must agree to comply with the applicable Federal requirements for grants and cooperative agreements, and to manage all expenditures or actions affecting the grant and cooperative agreement prudently. The documentation for each expenditure or action affecting the grant or cooperative agreement must reflect the appropriate organizational reviews or approvals, and should be made in advance of the action to ensure consistency with the applicable regulations.
3. Step 3. Reporting Requirements for Grant Recipients. This paragraph describes the reporting requirements required by an executed grant or cooperative agreement. Reporting relates to the type and frequency of required reports to be submitted to the Grant Technical Manager. 2 CFR Part 215.50-52 (formerly OMB Circular A-110) contains the criteria and procedures to be followed by Federal agencies for reporting and closeout requirements, including implementation of the financial and technical reporting requirements and

closeout procedures. Grant and cooperative agreement recipients will adhere to the required procedures.

Grant and cooperative agreement recipients are responsible for properly submitting financial status and program progress reports. The grant or cooperative agreement provisions will state, and the Grant Technical Manager should continually reiterate to the recipient, that failure to submit required financial and program progress reports, or to resolve financial or audit issues, may constitute a default of the grant or cooperative agreement. It should also be reiterated that failure to properly submit the required reports may delay/halt grant or cooperative agreement payments.

- a. Grant and Cooperative Agreement Extensions. A written request via mail, fax, or e-mail to extend the grant or cooperative agreement must be received a minimum of 30 days prior to expiration date. After review of the request, the grant recipient will be notified of the Grant Technical Manager's decision.
- b. Financial Status Reports. Grant recipients will submit financial status reports on Form SF-269, "Financial Status Report" and SF-272, "Federal Cash Transactions Report". The frequency of these reports should not be more frequent than quarterly or less frequent than annually. This parameter is based on 2 CFR Part 215.52 (formerly OMB Circular A-110) guidance. If quarterly, within 15 days after the end of each calendar quarter, the grant recipient shall provide an updated SF-272 "Federal Cash Transaction Report" to the Grant Technical Manager who will also provide an original to the Grant Program Administrator for review and file retention. The report elements are in compliance with the uniform Federal standards applicable to financial reporting by grant recipient. If information contained in the SF-272 is not adequate, the Grant Technical Manager/Grant Program Administrator will require the grant recipient to complete an SF-269, "Financial Status Report".

Also, note that a final report is required at the completion of the project, due to the Grant Technical Manager 90 days after grant expiration date or completion of the project and a final SF-269. This also is stipulated in 2 CFR Part 215.52 (formerly OMB Circular A-110). If the final report is to be published, then it must be approved by the Grant Technical Manager, Branch Chief, and Division Chief prior to publication.

The USCG reserves the right, upon written notice to grant recipient, to withhold future payments after a specified date if the recipient fails to comply with the conditions of an award as written, including the reporting requirements, or the recipient is indebted to the U.S. Government.

- c. Program Progress Report. These reports must be completed in a manner that will allow the USCG to evaluate the recipient's progress in carrying out activities stipulated in the grant or cooperative agreement. The Grant Technical Manager will assist grant recipients in completing Program Progress Reports. The Grant Technical Manager cannot request progress reports more frequently than quarterly or less frequently than annually per 2 CFR Part 215.51 (formerly OMB Circular A-110).

- d. Contents of Progress Reports. Unless otherwise specified in the grant or cooperative agreement, progress reports shall include:
- (1) A summary of overall progress, including results obtained to date, and a comparison of actual accomplishments with proposed goals for the period.
 - (2) An indication of any current problems or favorable or unusual developments.
 - (3) A summary of work to be performed during the next budget period.
 - (4) Other information pertinent to the project being funded or as specified in the terms and conditions of the grant or cooperative agreement.
- e. Timing of Progress Reports. Unless otherwise specified in the grant or cooperative agreement, progress reports are to be submitted by the grant recipient semi-annually, with the final report due within 90 days after the expiration of the grant.
4. Step 4. Grant Monitoring Information. Grant monitoring information is to assist the USCG in documenting the activities and progress of each grant recipient. A Grant Monitoring Report will be prepared and placed in each grant file. The purpose of this information is to ensure that the current grant project is being properly conducted by the recipient. This information may also be used to assist in developing terms and conditions that may be placed in subsequent grants. The Monitoring Report will be prepared by the Grant Technical Manager twice a year and submitted to the Grant Administrator.
5. Step 5. Suspension, Termination, and Enforcement. 2 CFR Part 215.60 through 2 CFR Part 62, (formerly OMB Circular A-110), contains criteria and procedures to be followed by Federal agencies for the suspension and termination procedures for Federal grant awards. Grant recipients must also adhere to the required procedures.
- a. Definitions. The following terms have the indicated meanings:
- (1) *Suspension* is an action by the USCG that temporarily withholds Federal support of a project pending corrective action by the recipient or a decision by the USCG to terminate the grant.
 - (2) *Termination* is the cancellation of a grant, in whole or in part, at any time prior to its expiration.
 - (3) *Enforcement* is the action by the USCG to ensure the recipient organization effectively manages the terms and conditions of the grant award.
- b. Intent. It is the intent of the USCG to establish and maintain a mutually beneficial grant relationship. Suspension or termination of grants prior to the planned completion date is reserved for those few exceptional situations that cannot be handled any other way.

- (1) A grant or cooperative agreement may be suspended or terminated in whole, or in part, in any of the following situations:
 - (a) When the recipient has materially failed to comply with the terms and conditions of the grant award.
 - (b) For any reason by mutual agreement between the USCG and the recipient upon the requirement of either party.
- (2) Action by the USCG to suspend or terminate a grant is taken only after the recipient has been informed by the USCG in writing of a deficiency on its part and given an opportunity to correct it. The USCG will promptly notify the recipient in writing of the determination and the reasons for termination or suspension, together with an effective date. The effective date shall provide for a 72 hour response period prior to the date, during which time the recipient may respond by telephone or in writing to the notice of intent to suspend or terminate.
- (3) No costs incurred during a suspension period or after the effective date of a termination are allowable. Exceptions are those costs which, in the opinion of the USCG, the recipient could not reasonably avoid or eliminate, or which were otherwise authorized by the suspension or termination notice, provided such costs would otherwise be allowed under the terms of the grant and the appropriate Federal cost principles.
- (4) Within 30 days of the termination date, the recipient must furnish a summary of progress per the grant agreement and an itemized accounting of costs incurred prior to the termination date. Final allowable costs under a termination settlement shall be in accordance with the terms of the grant, including this section, and the appropriate Federal cost principles, giving due consideration to the progress per the grant agreement. In no event will total USCG payments under a terminated grant exceed the approved grant amount.

c. Suspension Procedure. The following steps are taken for suspension:

- (1) When it is believed that a recipient has failed to comply with one or more of the terms and conditions of a grant, the Grant Technical Manager will advise the recipient in writing of the nature of the problem and that failure to correct the deficiency may result in suspension or termination of the grant. The recipient will be requested to respond in writing within 30 calendar days of the date of such letter, describing the action taken or the plan designed to correct the deficiency. Copies of such correspondence will be furnished to the Recipient's Project Director, and to the Grant Program Administrator.
- (2) If a satisfactory response is not received within the above period, the Grant Technical Manager, after conferring with the Grant Program Administrator and the USCG Legal Office, may issue a notice immediately suspending authority to

obligate grant funds further, in whole or in part. Notice of suspension is sent by certified mail, with a return receipt requested, to the authorized organizational representative, with a copy to the Recipient's Project Director. Within the USCG, copies are furnished to the Grant Program Administrator, USCG Legal Office, CG-5422, and USCG Finance Center (FINCEN). The notice sets forth the terms of suspension and its effective date.

- (3) The suspension remains in effect for a maximum of 60 days to allow the recipient to take corrective action. In the event that the deficiency is not corrected to the satisfaction of the USCG, the Grant Technical Manager (again after conferring with the Grant Program Administrator, CG-5422, and the USCG Legal Office) may issue a notice of termination, subsequent to review by legal counsel. The notice will set forth the reasons for the action and its effective date.
- d. Termination by Mutual Agreement. Circumstances may arise in which either the USCG or the recipient wishes to terminate the project. If both parties agree that continuation of the project would not produce results commensurate with the further expenditure of funds, or for any other reason, the grant may be terminated by mutual agreement. The procedures are as follows:
- (1) If the recipient wishes to terminate the project, the recipient's authorized organizational representative should advise the Grant Technical Manager in writing and send a copy to the Grant Program Administrator.
 - (2) If the USCG wishes to terminate the project, the Grant Technical Manager will advise the recipient's authorized representative in writing and will send copies to the Recipient's Project Director and the Grant Program Administrator.
 - (3) Within 30 days after receipt of a request from either party for termination by mutual agreement, the other party will provide an appropriate written response.
 - (4) Upon agreement by both parties, grant closeout procedures are initiated.
- e. Misconduct. The recipient is primarily responsible for preventing, detecting, investigating, and correcting misconduct involving individual staff members. When the organization fails to take corrective action, or in cases of misconduct charges that involve the organization, the USCG will deal with the misconduct charge as appropriate.
- f. Enforcement. 2 CFR Part 215.62 (formerly OMB Circular A-110) outlines the following guidelines for enforcement of Federal grant awards:
- (1) Remedies for noncompliance. If a recipient materially fails to comply with the terms and conditions of an award, whether stated in a Federal statute, regulation, assurance, application, or notice of award, the USCG may take one or more of the following actions, as appropriate for the circumstance:

- (a) Temporarily withhold cash payments pending correction of the deficiency by the recipient.
 - (b) Disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance.
 - (c) Wholly or partly suspend or terminate the current grant award.
 - (d) Withhold further grant awards for the project or program.
 - (e) Take other remedies that may be legally available.
- (2) Effects of suspension and termination. Costs of a recipient resulting from obligations incurred by the recipient during a suspension or after termination of an award are not allowable unless the USCG expressly authorizes them in the notice of suspension or termination or subsequently.
- (3) Relationship to debarment and suspension. The enforcement remedies identified in this section, including suspension and termination, do not preclude a recipient from being subject to debarment and suspension under 2 CFR Part 180.
6. Step 6. Changes in Project Direction or Management. 2 CFR Part 215.25 (formerly OMB Circular A-110) contains criteria and procedures to be followed by Federal agencies for changes in project direction or management for all recipients of USCG grants. Grant recipients will adhere to the required procedures.
- a. Changes in Objectives, Scope, or Methodology. 2 CFR Part 215.25, (formerly OMB Circular A-110) requires changes from the original objective or scope and its cost impact to be approved by the Grant Program Administrator. Such changes should be proposed to the Grant Technical Manager by the Recipient's Project Director, in writing, and countersigned by the recipient's authorized organizational representative for approval by the Grant Program Administrator. The Recipient's Project Director, operating within the established policies of the recipient organization, is free to pursue interesting and important leads that may arise during the conduct of the project to adopt an alternative approach that appears to be a more promising means of achieving the goals of the project. Any change in the conduct of the project affecting the probability of project completion is to be reported to the Grant Technical Manager.
 - b. Changes in the Recipient's Project Director or Level of Effort
 - (1) The decision to support a proposal is based largely on the proposed Recipient's Project Director's knowledge, capability, and availability to direct the research of the subject grant at the recipient institution. When it is anticipated that the Project Director is no longer able to direct the project, or the level of involvement of the decreases to such a level that effective leadership is no longer possible, the Grant

Technical Manager shall be informed immediately. Unless satisfactory alternative arrangements are made, these circumstances may be grounds for revocation of the grant award by the USCG. The USCG reserves the right to approve any new Project Director **before** the individual is assigned to the grant.

(2) In the event that a recipient desires to continue the project with a substitute Project Director, the Grant Program Administrator must be notified in writing of the substitute's name and qualifications. If approved by the Grant Program Administrator, the grant will be amended. If not, grant termination will be initiated. Awards cannot be transferred from one organization to another. If the Project Director wishes support for the project at another organization, he or she must submit a new proposal through the appropriate USCG office.

c. Contracting or Transferring the Project Effort. Excluding the purchase of commercially available supplies, materials, equipment, or general support services allowable under the grant, no significant part of the project or substantive effort under a USCG grant may be contracted or otherwise transferred to another organization, unless it was disclosed in the proposal submission or evidence of USCG prior approval appears in the grant agreement.

7. Step 7. Final Report. All grants have a completion deadline (all funds requested) by 30 September of the following year in which they were awarded per signed grant agreement.

If a grant recipient has not completed the work and has not requested all funding by 30 September, a request for extension must be sent to the Grant Technical Manager. If a request for extension is not received or not approved, the grant recipient will be given written notice and have 30 days to rectify the situation. This means that within 30 days from date of written notice, the grant recipient shall either complete the grant project and request all funding, or request and be granted an extension of the completion date for the grant. If the grant recipient has not complied within 30 days, a second written notice will be sent and the grant recipient will be notified that the outstanding funding for their grant will be forfeited unless they comply with the guidelines to either finish the grant project or request and receive an extension during the additional 30 days.

Sixty days after 30 September deadline, all grant projects must either be completed and final funding requested or they must be under a USCG approved extension. If grant recipients have not complied, the USCG grant funding will be forfeited and withdrawn.

Requesting final funding ensures that the grant product is properly documented, that the grant and/or cooperative agreement provisions have been met, and the recipient is paid in a timely and proper fashion in accordance with U.S. Department of Treasury regulations and the Prompt Payment Act.

a. The Grant Technical Manager will receive, review, and recommend approval/disapproval of the final report. The report must demonstrate how the project addressed the initial intent and what, if any, impacts were made of goals and objectives

of the Strategic Plan. The final report also should include a one or two paragraph abstract, which will be published on the boating safety website. Before publication of the final report, the Branch Chief and the Division Chief must approve the final report.

- b. If disapproved, a hold is placed on final payment; the Grant Technical Manager and/or Grant Program Administrator resolve the issue(s) in consultation with the appropriate Branch Chief and Division Chief.
 - c. The Grant Technical Manager will review requests for final progress payments; he/she will forward approved requests to the Grant Program Administrator for processing. The Grant Technical Manager will request, via e-mail, that the Grant Program Administrator close out the grant file provided there are no other stipulations associated with closing out the grant, i.e., disposition of property, etc.
 - d. The Grant Program Administrator will request, via memo, that the USCG Finance Center disburse the final progress payment.
 - e. After the above steps are completed, the Grant Program Administrator will close out the grant file.
8. Step 8. Close Out. This step ensures that every grant is properly brought to a close administratively and that its master copy/file is filed and/or prepared for follow-up activities such as abstracting, publishing of findings/results, and other such activities. The Grant Technical Manager will assess the recipient and performance and write the recipient award history.
- a. The Grant Program Administrator will audit the grant file to ensure compliance with all agreement provisions.
 - b. The Grant Program Administrator will resolve any open items, including disposition of grant-related property/equipment.
 - c. The Official Grant File will be maintained by the Grant Program Administrator and will contain all information significant to the program such as the following:
 - (1) Application
 - (2) Assurances and Certifications
 - (3) Grant or Cooperative Agreement (Original)
 - (4) Deviations
 - (5) Indirect Cost Rate Agreement
 - (6) IRS Designation of the Recipient as a 501(c)(3) Non-Profit Organization

- (7) Grant or Cooperative Agreement Amendments (Original)
- (8) Notice of Grant Award (Letter of Approval of Grant Project)
- (9) Appeal Documents
- (10) Audit Reports
- (11) Closeout Documents
- (12) Correspondence
- (13) Post Award Deviations
- (14) Disallowances
- (15) Financial Status Reports
- (16) Performance Reports
- (17) Postaward Project Amendments
- (18) Suspension and Termination Documents
- (19) All Memoranda on financial reporting, payments, account establishment and closure, etc.

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CHAPTER 6 SPECIAL/SUPPORTING ACTIVITIES

- A. Purpose. The purpose of this Chapter is to provide USCG personnel involved in the National Nonprofit Organization Recreational Boating Safety Grant Program with expanded explanations/guidelines to further explain and support certain activities within the three (3) Phases and respective sub-steps.
- B. Obligating Grant Funds. The grant and/or cooperative agreement executed between the USCG and the applicant/recipient is the operating document along with the actual memo to the Financial Management Specialist to obligate the award amount in this process.
- C. Preparing and Negotiating the Grant and/or Cooperative Agreement. The Grant Program Administrator contacts the Grant Technical Manager to give guidance on negotiations. The Grant Technical Manager then contacts recipients by telephone, fax, e-mail and/or letter to discuss the critical details of the grant and/or cooperative agreement. Such details include grant amount, work plan and scope of activities, financial and performance reporting schedules, and special conditions, if any. In some cases, the Grant Technical Manager will actually negotiate key points related to scope of work and funding (coordinating with the Grant Program Administrator as needed). The Grant Program Administrator will, however, clarify other questions/issues, coordinating with other USCG personnel as appropriate. The Grant Program Administrator will also certify that the correct funding mechanism is used (grant versus cooperative agreement).
- D. Special Conditions. If a selected recipient has a history of deficiencies or problems, “special conditions” (see 2 CFR Part 215.14, formerly OMB Circular A-110) may be required as part of the grant and/or cooperative agreement – if the recipient is deemed acceptable despite past performance. Such special conditions may relate to the applicant’s work plan, budget, or any other aspect of the grant and/or cooperative agreement. Special conditions can be determined by the Grant Program Administrator or the Grant Technical Manager. If determined by the Grant Technical Manager, the Grant Technical Manager shall work with the Grant Program Administrator on the proper terminology and “condition” for the recipient letter. In either case, the recipient shall be notified in writing of any special conditions, which will be incorporated into the grant and/or cooperative agreement. A copy shall go to the Grant Program Administrator for the master file and a copy shall go to the Grant Technical Manager. Once the “special conditions” have been satisfied, the “special conditions” shall be lifted from the grant and/or cooperative agreement and the recipient shall be notified in writing.
- E. Grant or Cooperative Agreement Execution. When a grant agreement or cooperative agreement is sent to an applicant for signature, it will be an original, including any appended materials. The recipient is to review, sign, and return the original for subsequent signature by the approving USCG official, i.e., Division Chief or his/her designee. The recipient’s signing of the grant agreement signifies acceptance of the provisions of the agreement. The original of the executed grant and/or cooperative agreement will remain with the Grant Program

Administrator. A copy will be provided to the Grant Technical Manager, to the grant recipient for their files and to the Financial Management Specialist in order to obligate funding.

- F. Funds Assignment. Once the grant or cooperative agreement is fully executed, it is returned to the Grant Program Administrator who will process the necessary documents to activate an account, (establish the account and transfer the funds to each account), including obligation of funds, advance of funds (if any) and progress payment schedules according to the provisions of the grant and/or cooperative agreement.
- G. Grant Technical Manager/Recipient Interface. The ultimate purpose is, of course, to maximize achievement of the National Nonprofit Organization Recreational Boating Safety Grant Program goals and objectives.
- H. Grant Technical Manager Responsibilities. The Grant Technical Manager is the USCG's official representative with the recipient. As such, he or she is expected to be professional, courteous, straightforward, and helpful toward the recipient. The key to successful interaction in the grant relationship is to be friendly without assuming the posture of "friend." Experience suggests that a recipient is less likely to readily accept directives/"no" answers from friends due to the connotation of equality attached to the term "friendship." It is extremely important for a Grant Technical Manager to maintain an official, oversight, and compliance relationship with the recipient.

As the Grant Technical Manager, it must always be clear to a recipient that you are obligated to follow rules and procedures just as grant applicants and grant recipients are required to comply with applicable laws and regulations. USCG employees must also follow the regulations as stipulated in 2 CFR Part 215 (formerly OMB Circular A-110), or the Standards of Ethical Conduct for Employees of the Executive Branch, 5 CFR Part 2635, and 18 USC 201-209 ("Bribery, Graft, and Conflicts of Interest"). Avoid giving responses that are non-authoritative, or discretionary, particularly when discretion is not allowed by grant or cooperative agreement or other regulatory sources. If you do not know the answer to a specific question, it is preferable to respond that the recipient should proceed with the current approach – as covered in the grant or cooperative agreement, while you determine a final response, stating that you will get back to the recipient as soon as possible. The Grant Technical Manager must always confirm any telephonic conversations with recipient in writing (either by letter, e-mail or fax) clarifying what was discussed.

Specifically, the Grant Technical Manager is responsible for contacting the recipient to discuss and ensure that the recipient representative is aware of the following:

1. Recipient responsibilities as referenced in the grant or cooperative agreement;
2. Grant project milestones and products;
3. Grant project reporting schedules;
4. Grant project payment schedules and procedures;

5. USCG Media Guidelines for Boating Information and Grant Product Guidelines;
6. Grant final product and final report review requirements by Grant Technical Manager, Branch Chief, and/or Division Chief.
7. Grant disposition of equipment and/or property; and
8. Grant closeout procedures.

- I. Reporting Requirements for Recipients. This paragraph describes the reporting requirements required by an executed grant or cooperative agreement. Reporting relates to the type and frequency of required reports to be submitted to the Grant Technical Manager. 2 CFR Part 215.50-52 (formerly OMB Circular A-110) contains criteria and procedures to be followed by Federal agencies for reporting and closeout requirements including implementation of the financial and technical reporting requirements and closeout procedures. Grant recipients will adhere to the required procedures.

Grant recipients are responsible for financial status, program progress, and final reports. The grant or cooperative agreement provisions will state, and the Grant Technical Manager should continually reiterate to the recipient that failure to submit required financial and program progress reports, or to resolve financial or audit issues, may constitute a default of the grant or cooperative agreement. It should also be reiterated that failure to submit required reports may delay/halt grant payments.

- J. Financial Status Reports. Grant recipients will submit financial status reports on Form SF-269, "Financial Status Report" and SF-272, "Federal Cash Transactions Report". The frequency of these reports should not be more frequent than quarterly or less frequent than annually; this parameter is based on 2 CFR Part 215.52 (formerly OMB Circular A-110) guidance. If quarterly, within 15 days after the end of each calendar quarter, the recipient shall provide an updated SF-272, to the Grant Technical Manager who will also provide the original to the Grant Program Administrator for review and file retention. The report elements will be in compliance with the uniform Federal standards applicable to financial reporting by recipients. If information contained in the SF-272 is not adequate, the Grant Technical Manager/Grant Program Administrator will require the recipient to complete an SF-269.

Also, note that a final report is required at the completion of the project. The final report will be due to the Grant Technical Manager no later than 90 days after grant year or completion of the project and a final SF-269. This is also stipulated in 2 CFR Part 215.52 (formerly OMB Circular A-110). If the final report is to be published, then it must be approved by the Grant Technical Manager, Branch Chief, and Division Chief prior to publication.

The USCG reserves the right, upon written notice to recipient, to withhold future payments after a specified date if the recipient:

1. Fails to comply with the conditions of an award as written, including the reporting requirement.

2. Is indebted to the U.S. Government.

K. Program Progress Reports. These reports must be completed in a manner that will allow the USCG to evaluate the recipient's progress in carrying out activities stipulated in the grant or cooperative agreement. The Grant Technical Manager will assist the grant recipient in completing Program Progress Reports. The Grant Technical Manager cannot request progress reports more frequently than quarterly or less frequently than annually per 2 CFR Part 215.51 (formerly OMB Circular A-110). The Recipient's Project Director should submit progress reports to the Grant Technical Manager.

1. Contents of Progress Reports. Unless otherwise specified in the agreement, progress reports shall include:
 - a. A summary of overall progress, including results obtained to date and a comparison of actual accomplishments with proposed goals for the period.
 - b. An indication of any current problems or favorable or unusual developments.
 - c. A summary of work to be performed during the next budget period.
 - d. Other information pertinent to the project being funded or as specified in the terms and conditions of the grant.

2. Timing of Progress Reports. Unless otherwise specified in the grant agreement, progress reports are submitted semi-annually, with the final report due within 90 days after the expiration of the grant. The final report should include a 1-2 paragraph abstract, which summarizes the accomplishments of the grant. This abstract will be published on the boating safety website.

L. Grant Extensions. A written request via mail, facsimile, or e-mail to extend the grant must be received a minimum of 30 days prior to expiration date. After review of the request, the recipient will be notified of the Grant Technical Manager's decision. Upon approval, an amendment will be initiated.

M. Interest Earned. *Interest earned by the recipient must be reported to the USCG quarterly on the SF-272. Recipients shall maintain advances of Federal funds in interest bearing accounts, unless the conditions listed below apply: (1) The recipient receives less than \$100,000 in Federal awards per year, (2) The best reasonably available interest bearing account would not be expected to earn interest in excess of \$250 per year on Federal cash balances, or (3) The depository would require an average or minimum balance so high that it would not be feasible within the expected Federal and non-Federal cash resource. For those entities where the Cash Management Improvement Act (CMIA) (Public Law 101-453) and its implementing regulations do not apply, interest earned on Federal advances deposited in interest bearing accounts shall be remitted annually to the Department of Health and Human Services, Payment Management System P.O. Box 6021, Rockville, MD 20852 with a copy of said payment letter provided to the USCG Grant Technical Manager. Interest amounts up to*

\$250 per year may be retained by the recipient for administrative expense. (See 2 CFR Part 215.22, formerly OMB Circular A-110).

- N. Program Income. The USCG delegates decisions on the expenditure and application of program income generated in the course of a grant award to the recipient. 2 CFR Part 215.24 (formerly OMB Circular A-110) specifies alternatives to utilization of program income as follows:
1. Additive Alternative. The funds may be used for the same purposes and under the same conditions stated in the grant agreement to augment the project activities.
 2. Matching Alternative. In the case of grant awards that require non-Federal matching funds, project income may be used to finance part or the entire non-Federal matching share.
 3. Deductive Alternative. Program income is deducted from the total grant award.
- O. Other Cost Credits. Purchase discounts, rebates, allowances, credits resulting from overhead rate adjustments, and other credits relating to any allowable cost received by or accruing to the recipient are credited against USCG grant costs if the grant has not been closed out. A grant is closed out when the final net disbursements are reported on the SF-272 and the Final Project Report is submitted to and accepted by the USCG. If the grant is closed out, cost credits are accepted only if the amount is \$300 or more. Such credits must be approved by the Grant Technical Manager in writing.
- P. Grant Payment Procedures. This paragraph describes the payment procedures used by the USCG HQ in administering executed grants or cooperative agreements.

Funding advances to recipients should be limited to the minimum amount needed, and be timed to meet immediate financial needs for carrying out approved project activities (for electronic transfers of funds-three days prior to need). The timing and amount of advances should be as close as administratively feasible to the recipient's actual expenditure for direct program costs and the proportionate share of any allowable indirect costs.

All grant advances and/or reimbursements are to be made by U.S. Treasury electronic funds transfer. Such payments are calculated and scheduled to make funds available immediately prior to the recipient's need to expend the funds. All payments, whether advance or reimbursement, are now made by electronic funds transfer from the U.S. Treasury directly into the recipient's account at their financial institution. The Data Universal Numbering System (DUNS number) is used to process the payments and must be updated annually. It is the responsibility of the grant recipient to update the DUNS information.

If a National Nonprofit Organization Recreational Boating Safety Grant Program grant recipient is unwilling/unable to minimize the gap between drawdown and disbursement on a reimbursement basis, either a change in "fund advances procedures" is used, or available sanctions may have to be instituted. The Grant Program Administrator and Grant Technical Manager should discuss the situation and determine an appropriate resolution.

Approval of SF-270s (“Request for Advance or Reimbursement”) must be within two (2) days of recipient’s request (weekends and holidays excluded). SF-270s will be forwarded by the Grant Technical Manager, along with a memo, to the Grant Program Administrator authorizing payment approval. Grant Program Administrator will then process the SF-270 by preparing a memo to the FINCEN authorizing payment and transmit to FINCEN via fax. The Prompt Pay Act requires quick turn around, as grants do not have a surplus of funds to cover any interest charges due to a delay in payment.

- Q. Managing Protests and Complaints. It is possible that non-selection notices may generate a protest to an award to a selected grant recipient. Some citizens may respond to understandable disappointment by asking about the procedure for protesting. Often, expressing interest in the protest procedure is a way to vent the disappointment that naturally occurs; a certain amount of venting is to be expected. However, protests **are not available to non-selected grant applicants**, as explained below. Grant applicants are free, however, to request a copy of the grant application proposal under the Freedom of Information Act through the USCG’s Freedom of Information Act Officer.
- R. The Law. The Federal Grant and Cooperative Agreement Act of 1977, Public Law 95-224, as codified in 31 USC. §6301-6308 establishes standards that agencies are to use in choosing the appropriate financial instrument, i.e., procurement contract, grant, or cooperative agreement. As previously stated, under the 1977 Act grants and cooperative agreements are more closely related to each other than to the conventional procurement contract, which is to be used to acquire property or services for the Federal government. Under the Privacy Act of 1974, 5 USC §552a, Personally Identifiable Information (PII) shall be protected. Unintended disclosure of PII constitutes a privacy incident and must be reported to the Commanding Officer as required by COMDTINST 5260.5 (series), Privacy Incident Response, Notification, and Reporting Procedures for Personally Identifiable Information (PII). Commanding Officers shall establish appropriate administrative, technical, and physical safeguards to ensure the security, confidentiality, and handling of all grant applicant information. Responses to requests from grant applicants seeking information pertaining to them, (e.g., regarding personal data contained within grant applications) must be processed in accordance with procedures established by the FOI/PA Manual and applicable mandates regarding Privacy Act requests.
- S. The Process. The Government Accountability Office (GAO) has determined that it will not extend its procurement contract “bid protest” jurisdiction to grants. The National Nonprofit Organization Recreational Boating Safety Grant Program is included under this policy. In other words, the GAO will not consider complaints by rejected grant applicants who contend that they should have received the grant rather than the successful applicant. The GAO, through the Comptroller General, does, however, maintain jurisdiction for rendering decisions on the legality of Federal expenditures for grant awards related to compliance with applicable statutes and regulations. The bottom line is that **there is no protest procedure available for non-selected National Non-Profit Organization Recreational Boating Safety Grant applicants**.

- T. Managing Complaints/Attempts to Protest. USCG personnel, particularly Grant Technical Managers, who may interface with disgruntled non-selected applicants, must know how to manage such complaints and/or efforts to protest. This can best be accomplished by responding in a clear, straightforward, professional, yet confident manner, citing the facts from the above paragraphs. The proper response is to clearly state that discretionary grant programs such as the National Nonprofit Organization Recreational Boating Safety Grant Program are not subject to protest under Federal statutes or guidelines; hence, there is no formal protest procedure available. It should be stressed that protest procedures are applicable only to conventional procurement contracts, a significantly different type of financial mechanism than a grant. However, non-selected applicants may provide their comments on the Program in writing to the Grant Program Director.
- U. Amending the Grant or Cooperative Agreement. Grant or cooperative agreement amendments must be handled in a manner that maintains documented control of changes to previously approved work plans, schedules, and budgets.

Recipients are required to request in writing approvals for changes to approved financial plans (financial budgets), milestone schedule, or scope of work. Recipients are required to submit to their assigned Grant Technical Manager any request for change using Form SF-424A, accompanied by a revised "Work Plan and Budget Work Sheet" and/or payment schedule. Such changes include, but are not limited to the following:

1. Any reduction in the total amount of grant funds or more than a 10 percent change in the total budget if the Federal share of the total budget exceeds \$100,000.00;
2. Any change in the Work Plan;
3. All program extensions;
4. Any new Project Director must be approved by the Grant Technical Manager; and
5. Any change in the organization responsible for the grant project, i.e., organization merged with another organization, etc.

All changes require written requests and written approval from the USCG. A modified grant or cooperative agreement will be prepared by the Grant Technical Manager and coordinated with the Grant Program Administrator for processing and transmittal to the recipient. Once the recipient signs the modified agreement, it must be returned to Grant Program Administrator and will then have the Division Chief sign and execute the modification.

If the level of non-compliance with the grant or cooperative agreement provisions is deemed sufficient to suspend or terminate the grant, either partially or fully, the recipient shall be given written notice of such sanction via registered mail.

- V. Closeout Actions & Follow-Up Activities.

1. Closeout. Closeout refers to the process by which a Federal awarding agency determines that all applicable administrative actions, and all required work items of the award have been completed by the recipient and the Federal awarding agency. The primary actions performed by the Grant Program Administrator include:
 - a. Ensuring that all grant or cooperative agreement provisions have been met and are duly documented and that all payments have been made;
 - b. Reviewing the project file folder, using a checklist to ensure that all necessary documents are present;
 - c. In some cases, audits may be required before final closeout. If audited, the Grant Program Administrator will review results. If satisfactory, closeout can be accomplished. If not, resolution must be made by the recipient.
 - d. Storing the master grant file in the grants storage area with the other master grant files. The records shall be retained for two (2) years then transferred to FRC as mandated in accordance with the Information and Life Cycle Management Manual, COMDTINST M5212.12 (series).
2. Follow-Up Activities. Follow-up activities are to document the history of the entire grant process from proposal receipt through project close-out, and to prepare for the next Federal Fiscal Year program. After all grant project activities are completed, the following actions are taken:
 - a. The Grant Technical Manager will prepare the Project Grant Award History. This is a one-page abstract of each grant project from the prior Federal Fiscal Year that summarizes the grant's purpose, activities, methods, conclusions, and implications for the National Nonprofit Organization Recreational Boating Safety Grant Program. The Grant Technical Manager will provide copy to the Grant Program Administrator;
 - b. The Grant Program Administrator will review and file in the master grant file; and
 - c. The Grant Technical Managers are responsible for maintaining full documentation of all interactions with the recipient, to include "memos to file" of meetings, phone calls, questions, complaints, and other events affecting management of the grant. Such documentation can be written or electronic.

Conclusion

This Grant Management Manual for the National Nonprofit Organization Recreational Boating Safety Grant Program was prepared to provide an understanding of the entire grant process leading up to an award of a grant; and to provide detail as to what is involved in the management of the agreement after award, payment procedures and closeout.

The Manual includes guidance to both the United States Coast Guard (USCG) personnel and to the recipients of the grant agreements. Since the National Nonprofit Organization Recreational Boating Safety Grants Program is funded by appropriated funds, many laws, regulations and national policy issues must be followed.

The responsibilities of the USCG are detailed, along with the references to the various laws and administrative rules that are involved with this program. The information for the grant recipients regarding the applicability of the rules, as well as details on reporting financial and programmatic aspects of the agreement provide a basis for a successful and efficient completion of this very important safety program.

The entire grants process at the Federal level is an evolving and ever changing one. This Manual will be modified as necessary to provide the latest information to both the USCG personnel and the recipients.

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APPENDICES AND REFERENCES

Appendices

1. 2 CFR Part 280 – OMB Guidelines to Agencies on Government-wide Debarment and Suspension (Nonprocurement) A-1
2. 2 CFR Part 215 – Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations (Formerly OMB Circular A-110) B-1
3. 2 CFR Part 230 – Cost Principles for Non-Profit Organizations (Formerly OMB Circular A-122) C-1
4. OMB Circular A-133 – Audits of States, Local Governments, and Non-Profit Organizations D-1
5. List of Forms and Web Links E-1

References

1. Privacy Act of 1974, 5 USC §552a

Title 2: Grants and Agreements

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

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- § 180.825 What information must I provide to the debarring official if I contest the proposed debarment?
- § 180.830 Under what conditions do I get an additional opportunity to challenge the facts on which the proposed debarment is based?
- § 180.835 Are debarment proceedings formal?
- § 180.840 How is fact-finding conducted?
- § 180.845 What does the debarring official consider in deciding whether to debar me?
- § 180.850 What is the standard of proof in a debarment action?
- § 180.855 Who has the burden of proof in a debarment action?
- § 180.860 What factors may influence the debarring official's decision?
- § 180.865 How long may my debarment last?
- § 180.870 When do I know if the debarring official debars me?
- § 180.875 May I ask the debarring official to reconsider a decision to debar me?
- § 180.880 What factors may influence the debarring official during reconsideration?
- § 180.885 May the debarring official extend a debarment?

Subpart I—Definitions

- § 180.900 Adequate evidence.
- § 180.905 Affiliate.
- § 180.910 Agent or representative.
- § 180.915 Civil judgment.
- § 180.920 Conviction.
- § 180.925 Debarment.
- § 180.930 Debarring official.
- § 180.935 Disqualified.
- § 180.940 Excluded or exclusion.
- § 180.945 Excluded Parties List System (EPLS).
- § 180.950 Federal agency.
- § 180.955 Indictment.
- § 180.960 Ineligible or ineligibility.
- § 180.965 Legal proceedings.
- § 180.970 Nonprocurement transaction.

- § 180.975 Notice.
- § 180.980 Participant.
- § 180.985 Person.
- § 180.990 Preponderance of the evidence.
- § 180.995 Principal.
- § 180.1000 Respondent.
- § 180.1005 State.
- § 180.1010 Suspending official.
- § 180.1015 Suspension.
- § 180.1020 Voluntary exclusion or voluntarily excluded.

Appendix to Part 180—Covered Transactions

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

Source: 70 FR 51865, Aug. 31, 2005, unless otherwise noted.

§ 180.5 What does this part do?

This part provides Office of Management and Budget (OMB) guidance for Federal agencies on the governmentwide debarment and suspension system for nonprocurement programs and activities.

§ 180.10 How is this part organized?

This part is organized in two segments.

(a) Sections 180.5 through 180.45 contain general policy direction for Federal agencies' use of the standards in subparts A through I of this part.

(b) Subparts A through I of this part contain uniform governmentwide standards that Federal agencies are to use to specify—

(1) The types of transactions that are covered by the nonprocurement debarment and suspension system;

(2) The effects of an exclusion under that nonprocurement system, including reciprocal effects with the governmentwide debarment and suspension system for procurement;

(3) The criteria and minimum due process to be used in nonprocurement debarment and suspension actions; and

(4) Related policies and procedures to ensure the effectiveness of those actions.

§ 180.15 To whom does the guidance apply?

The guidance provides OMB guidance only to Federal agencies. Publication of the guidance in the CFR does not change its nature—it is guidance and not regulation. Federal agencies' implementation of the guidance governs the rights and responsibilities of other persons affected by the nonprocurement debarment and suspension system.

§ 180.20 What must a Federal agency do to implement these guidelines?

As required by Section 3 of E.O. 12549, each Federal agency with nonprocurement programs and activities covered by subparts A through I of the guidance must issue regulations consistent with those subparts.

§ 180.25 What must a Federal agency address in its implementation of the guidance?

Each Federal agency implementing regulation:

(a) Must establish policies and procedures for that agency's nonprocurement debarment and suspension programs and activities that are consistent with the guidance. When adopted by a Federal agency, the provisions of the guidance has regulatory effect for that agency's programs and activities.

(b) Must address some matters for which these guidelines give each Federal agency some discretion. Specifically, the regulation must—

(1) Identify either the Federal agency head or the title of the designated official who is authorized to grant exceptions under §180.135 to let an excluded person participate in a covered transaction.

(2) State whether the agency includes as covered transactions an additional tier of contracts awarded under covered nonprocurement transactions, as permitted under §180.220(c).

(3) Identify the method(s) an agency official may use, when entering into a covered transaction with a primary tier participant, to communicate to the participant the requirements described in §180.435. Examples of methods are an award term that requires compliance as a condition of the award; an assurance of compliance obtained at time of application; or a certification.

(4) State whether the Federal agency specifies a particular method that participants must use to communicate compliance requirements to lower-tier participants, as described in §180.330(a). If there is a specified method, the regulation needs to require agency officials, when entering into covered transactions with primary tier participants, to communicate that requirement.

(c) May also, at the agency's option:

- (1) Identify any specific types of transactions that the Federal agency includes as “nonprocurement transactions” in addition to the examples provided in §180.970.
- (2) Identify any types of nonprocurement transactions that the Federal agency exempts from coverage under these guidelines, as authorized under §180.215(g)(2).
- (3) Identify specific examples of types of individuals who would be “principals” under the Federal agency's nonprocurement programs and transactions, in addition to the types of individuals described at §180.995.
- (4) Specify the Federal agency's procedures, if any, by which a respondent may appeal a suspension or debarment decision.
- (5) Identify by title the officials designated by the Federal agency head as debarring officials under §180.930 or suspending officials under §180.1010.
- (6) Include a subpart covering disqualifications, as authorized in §180.45.
- (7) Include any provisions authorized by OMB.

[70 FR 51865, Aug. 31, 2005, as amended at 71 FR 66432, Nov. 15, 2006]

§ 180.30 Where does a Federal agency implement these guidelines?

Each Federal agency that participates in the governmentwide nonprocurement debarment and suspension system must issue a regulation implementing these guidelines within its chapter in subtitle B of this title of the Code of Federal Regulations.

§ 180.35 By when must a Federal agency implement these guidelines?

Federal agencies must submit proposed regulations to the OMB for review within nine months of the issuance of these guidelines and issue final regulations within eighteen months of these guidelines.

§ 180.40 How are these guidelines maintained?

The Interagency Committee on Debarment and Suspension established by section 4 of E.O. 12549 recommends to the OMB any needed revisions to the guidelines in this part. The OMB publishes proposed changes to the guidelines in the Federal Register for public comment, considers comments with the help of the Interagency Committee on Debarment and Suspension, and issues the final guidelines.

§ 180.45 Do these guidelines cover persons who are disqualified, as well as those who are excluded from nonprocurement transactions?

A Federal agency may add a subpart covering disqualifications to its regulation implementing these guidelines, but the guidelines in subparts A through I of this part—

(a) Address disqualified persons only to—

(1) Provide for their inclusion in the EPLS; and

(2) State responsibilities of Federal agencies and participants to check for disqualified persons before entering into covered transactions.

(b) Do not specify the—

(1) Transactions for which a disqualified person is ineligible. Those transactions vary on a case-by-case basis, because they depend on the language of the specific statute, Executive order or regulation that caused the disqualification;

(2) Entities to which a disqualification applies; or

(3) Process that a Federal agency uses to disqualify a person. Unlike exclusion under subparts A through I of this part, disqualification is frequently not a discretionary action that a Federal agency takes, and may include special procedures.

Subpart A—General

§ 180.100 How are subparts A through I organized?

(a) Each subpart contains information related to a broad topic or specific audience with special responsibilities, as shown in the following table:

In subpart ...	You will find provisions related to . . .
A	general information about Subparts A through I of this part.
B	the types of transactions that are covered by the Governmentwide nonprocurement suspension and debarment system.
C	the responsibilities of persons who participate in covered transactions.
D	the responsibilities of Federal agency officials who are authorized to enter into covered transactions.
E	the responsibilities of Federal agencies for entering information into the EPLS
F	the general principles governing suspension, debarment, voluntary exclusion and settlement.
G	suspension actions.

H	debarment actions.
I	definitions of terms used in this part.

(b) The following table shows which subparts may be of special interest to you, depending on who you are:

If you are . . .	See Subpart(s) . .
(1) a participant or principal in a nonprocurement transaction	A, B, C and I.
(2) a respondent in a suspension action	A, B, F, G and I.
(3) a respondent in a debarment action	A, B, F, H and I.
(4) a suspending official	A, B, E, F, G and I.
(5) a debarring official	A, B, D, F, H and I.
(6) an Federal agency official authorized to enter into a covered transaction	A, B, D, E and I.

§ 180.105 How is this part written?

(a) This part uses a “plain language” format to make it easier for the general public and business community to use. The section headings and text, often in the form of questions and answers, must be read together.

(b) Pronouns used within this part, such as “I” and “you,” change from subpart to subpart depending on the audience being addressed.

(c) The “Covered Transactions” diagram in the appendix to this part shows the levels or “tiers” at which a Federal agency may enforce an exclusion.

§ 180.110 Do terms in this part have special meanings?

This part uses terms throughout the text that have special meaning. Those terms are defined in subpart I of this part. For example, three important terms are—

(a) *Exclusion or excluded*, which refers only to discretionary actions taken by a suspending or debarring official under Executive Order 12549 and Executive Order 12689 or under the Federal Acquisition Regulation (48 CFR part 9, subpart 9.4);

(b) *Disqualification or disqualified*, which refers to prohibitions under specific statutes, executive orders (other than Executive Order 12549 and Executive Order 12689), or other authorities. Disqualifications frequently are not subject to the discretion of a

Federal agency official, may have a different scope than exclusions, or have special conditions that apply to the disqualification; and

(c) *Ineligibility or ineligible*, which generally refers to a person who is either excluded or disqualified.

§ 180.115 What do Subparts A through I of this part do?

Subparts A through I of this part provide for reciprocal exclusion of persons who have been excluded under the Federal Acquisition Regulation, and provide for the consolidated listing of all persons who are excluded, or disqualified by statute, executive order or other legal authority.

§ 180.120 Do subparts A through I of this part apply to me?

Portions of subparts A through I of this part (see table at §180.100(b)) apply to you if you are a—

- (a) Person who has been, is, or may reasonably be expected to be, a participant or principal in a covered transaction;
- (b) Respondent (a person against whom a Federal agency has initiated a debarment or suspension action);
- (c) Federal agency debarring or suspending official; or
- (d) Federal agency official who is authorized to enter into covered transactions with non-Federal parties.

§ 180.125 What is the purpose of the nonprocurement debarment and suspension system?

- (a) To protect the public interest, the Federal Government ensures the integrity of Federal programs by conducting business only with responsible persons.
- (b) A Federal agency uses the nonprocurement debarment and suspension system to exclude from Federal programs persons who are not presently responsible.
- (c) An exclusion is a serious action that a Federal agency may take only to protect the public interest. A Federal agency may not exclude a person or commodity for the purposes of punishment.

§ 180.130 How does an exclusion restrict a person's involvement in covered transactions?

With the exceptions stated in §§180.135, 315, and 420, a person who is excluded by any Federal agency may not:

- (a) Be a participant in a Federal agency transaction that is a covered transaction; or
- (b) Act as a principal of a person participating in one of those covered transactions.

§ 180.135 May a Federal agency grant an exception to let an excluded person participate in a covered transaction?

(a) A Federal agency head or designee may grant an exception permitting an excluded person to participate in a particular covered transaction. If the agency head or designee grants an exception, the exception must be in writing and state the reason(s) for deviating from the governmentwide policy in Executive Order 12549.

(b) An exception granted by one Federal agency for an excluded person does not extend to the covered transactions of another Federal agency.

§ 180.140 Does an exclusion under the nonprocurement system affect a person's eligibility for Federal procurement contracts?

If any Federal agency excludes a person under Executive Order 12549 or Executive Order 12689, on or after August 25, 1995, the excluded person is also ineligible for Federal procurement transactions under the FAR. Therefore, an exclusion under this part has reciprocal effect in Federal procurement transactions.

§ 180.145 Does an exclusion under the Federal procurement system affect a person's eligibility to participate in nonprocurement transactions?

If any Federal agency excludes a person under the FAR on or after August 25, 1995, the excluded person is also ineligible to participate in Federal agencies' nonprocurement covered transactions. Therefore, an exclusion under the FAR has reciprocal effect in Federal nonprocurement transactions.

§ 180.150 Against whom may a Federal agency take an exclusion action?

Given a cause that justifies an exclusion under this part, a Federal agency may exclude any person who has been, is, or may reasonably be expected to be a participant or principal in a covered transaction.

§ 180.155 How do I know if a person is excluded?

Check the Governmentwide Excluded Parties List System (EPLS) to determine whether a person is excluded. The General Services Administration (GSA) maintains the EPLS and makes it available, as detailed in Subpart E of this part. When a Federal agency takes an action to exclude a person under the nonprocurement or procurement debarment and

suspension system, the agency enters the information about the excluded person into the EPLS.

Subpart B—Covered Transactions

§ 180.200 What is a covered transaction?

A covered transaction is a nonprocurement or procurement transaction that is subject to the prohibitions of this part. It may be a transaction at—

- (a) The primary tier, between a Federal agency and a person (see appendix to this part); or
- (b) A lower tier, between a participant in a covered transaction and another person.

§ 180.205 Why is it important if a particular transaction is a covered transaction?

The importance of whether a transaction is a covered transaction depends upon who you are.

- (a) As a participant in the transaction, you have the responsibilities laid out in subpart C of this part. Those include responsibilities to the person or Federal agency at the next higher tier from whom you received the transaction, if any. They also include responsibilities if you subsequently enter into other covered transactions with persons at the next lower tier.
- (b) As a Federal official who enters into a primary tier transaction, you have the responsibilities laid out in subpart D of this part.
- (c) As an excluded person, you may not be a participant or principal in the transaction unless—
 - (1) The person who entered into the transaction with you allows you to continue your involvement in a transaction that predates your exclusion, as permitted under §180.310 or §180.415; or
 - (2) A Federal agency official obtains an exception from the agency head or designee to allow you to be involved in the transaction, as permitted under §180.135.

§ 180.210 Which nonprocurement transactions are covered transactions?

All nonprocurement transactions, as defined in §180.970, are covered transactions unless listed in the exemptions under §180.215.

§ 180.215 Which nonprocurement transactions are not covered transactions?

The following types of nonprocurement transactions are not covered transactions:

(a) A direct award to—

- (1) A foreign government or foreign governmental entity;
- (2) A public international organization;
- (3) An entity owned (in whole or in part) or controlled by a foreign government; or
- (4) Any other entity consisting wholly or partially of one or more foreign governments or foreign governmental entities.

(b) A benefit to an individual as a personal entitlement without regard to the individual's present responsibility (but benefits received in an individual's business capacity are not excepted). For example, if a person receives social security benefits under the Supplemental Security Income provisions of the Social Security Act, 42 U.S.C. 1301 *et seq.*, those benefits are not covered transactions and, therefore, are not affected if the person is excluded.

(c) Federal employment.

(d) A transaction that a Federal agency needs to respond to a national or agency-recognized emergency or disaster.

(e) A permit, license, certificate or similar instrument issued as a means to regulate public health, safety or the environment, unless a Federal agency specifically designates it to be a covered transaction.

(f) An incidental benefit that results from ordinary governmental operations.

(g) Any other transaction if—

- (1) The application of an exclusion to the transaction is prohibited by law; or
- (2) A Federal agency's regulation exempts it from coverage under this part.

§ 180.220 Are any procurement contracts included as covered transactions?

(a) Covered transactions under this part—

- (1) Do not include any procurement contracts awarded directly by a Federal agency; but
- (2) Do include some procurement contracts awarded by non-Federal participants in nonprocurement covered transactions.

(b) Specifically, a contract for goods or services is a covered transaction if any of the following applies:

(1) The contract is awarded by a participant in a nonprocurement transaction that is covered under §180.210, and the amount of the contract is expected to equal or exceed \$25,000.

(2) The contract requires the consent of an official of a Federal agency. In that case, the contract, regardless of the amount, always is a covered transaction, and it does not matter who awarded it. For example, it could be a subcontract awarded by a contractor at a tier below a nonprocurement transaction, as shown in the appendix to this part.

(3) The contract is for Federally-required audit services.

(c) A subcontract also is a covered transaction if,—

(1) It is awarded by a participant in a procurement transaction under a nonprocurement transaction of a Federal agency that extends the coverage of paragraph (b)(1) of this section to additional tiers of contracts (see the diagram in the appendix to this part showing that optional lower tier coverage); and

(2) The value of the subcontract is expected to equal or exceed \$25,000.

[70 FR 51865, Aug. 31, 2005, as amended at 71 FR 66432, Nov. 15, 2006]

§ 180.225 How do I know if a transaction in which I may participate is a covered transaction?

As a participant in a transaction, you will know that it is a covered transaction because the Federal agency regulations governing the transaction, the appropriate Federal agency official or participant at the next higher tier who enters into the transaction with you, will tell you that you must comply with applicable portions of this part.

Subpart C—Responsibilities of Participants Regarding Transactions Doing Business With Other Persons

§ 180.300 What must I do before I enter into a covered transaction with another person at the next lower tier?

When you enter into a covered transaction with another person at the next lower tier, you must verify that the person with whom you intend to do business is not excluded or disqualified. You do this by:

(a) Checking the EPLS; or

(b) Collecting a certification from that person; or

(c) Adding a clause or condition to the covered transaction with that person.

[70 FR 51865, Aug. 31, 2005, as amended at 71 FR 66432, Nov. 15, 2006]

§ 180.305 May I enter into a covered transaction with an excluded or disqualified person?

(a) You as a participant may not enter into a covered transaction with an excluded person, unless the Federal agency responsible for the transaction grants an exception under §180.135.

(b) You may not enter into any transaction with a person who is disqualified from that transaction, unless you have obtained an exception under the disqualifying statute, Executive order, or regulation.

§ 180.310 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?

(a) You as a participant may continue covered transactions with an excluded person if the transactions were in existence when the agency excluded the person. However, you are not required to continue the transactions, and you may consider termination. You should make a decision about whether to terminate and the type of termination action, if any, only after a thorough review to ensure that the action is proper and appropriate.

(b) You may not renew or extend covered transactions (other than no-cost time extensions) with any excluded person, unless the Federal agency responsible for the transaction grants an exception under §180.135.

§ 180.315 May I use the services of an excluded person as a principal under a covered transaction?

(a) You as a participant may continue to use the services of an excluded person as a principal under a covered transaction if you were using the services of that person in the transaction before the person was excluded. However, you are not required to continue using that person's services as a principal. You should make a decision about whether to discontinue that person's services only after a thorough review to ensure that the action is proper and appropriate.

(b) You may not begin to use the services of an excluded person as a principal under a covered transaction unless the Federal agency responsible for the transaction grants an exception under §180.135.

§ 180.320 Must I verify that principals of my covered transactions are eligible to participate?

Yes, you as a participant are responsible for determining whether any of your principals of your covered transactions is excluded or disqualified from participating in the transaction.

You may decide the method and frequency by which you do so. You may, but you are not required to, check the EPLS.

§ 180.325 What happens if I do business with an excluded person in a covered transaction?

If as a participant you knowingly do business with an excluded person, the Federal agency responsible for your transaction may disallow costs, annul or terminate the transaction, issue a stop work order, debar or suspend you, or take other remedies as appropriate.

§ 180.330 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

Before entering into a covered transaction with a participant at the next lower tier, you must require that participant to—

- (a) Comply with this subpart as a condition of participation in the transaction. You may do so using any method(s), unless the regulation of the Federal agency responsible for the transaction requires you to use specific methods.
- (b) Pass the requirement to comply with this subpart to each person with whom the participant enters into a covered transaction at the next lower tier.

Disclosing Information—Primary Tier Participants

§ 180.335 What information must I provide before entering into a covered transaction with a Federal agency?

Before you enter into a covered transaction at the primary tier, you as the participant must notify the Federal agency office that is entering into the transaction with you, if you know that you or any of the principals for that covered transaction:

- (a) Are presently excluded or disqualified;
- (b) Have been convicted within the preceding three years of any of the offenses listed in §180.800(a) or had a civil judgment rendered against you for one of those offenses within that time period;
- (c) Are presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses listed in §180.800(a); or

(d) Have had one or more public transactions (Federal, State, or local) terminated within the preceding three years for cause or default.

§ 180.340 If I disclose unfavorable information required under §180.335, will I be prevented from participating in the transaction?

As a primary tier participant, your disclosure of unfavorable information about yourself or a principal under §180.335 will not necessarily cause a Federal agency to deny your participation in the covered transaction. The agency will consider the information when it determines whether to enter into the covered transaction. The agency will also consider any additional information or explanation that you elect to submit with the disclosed information.

§ 180.345 What happens if I fail to disclose information required under §180.335?

If a Federal agency later determines that you failed to disclose information under §180.335 that you knew at the time you entered into the covered transaction, the agency may—

- (a) Terminate the transaction for material failure to comply with the terms and conditions of the transaction; or
- (b) Pursue any other available remedies, including suspension and debarment.

§ 180.350 What must I do if I learn of information required under §180.335 after entering into a covered transaction with a Federal agency?

At any time after you enter into a covered transaction, you must give immediate written notice to the Federal agency office with which you entered into the transaction if you learn either that—

- (a) You failed to disclose information earlier, as required by §180.335; or
- (b) Due to changed circumstances, you or any of the principals for the transaction now meet any of the criteria in §180.335.

Disclosing Information—Lower Tier Participants

§ 180.355 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?

Before you enter into a covered transaction with a person at the next higher tier, you as a lower tier participant must notify that person if you know that you or any of the principals are presently excluded or disqualified.

§ 180.360 What happens if I fail to disclose information required under §180.355?

If a Federal agency later determines that you failed to tell the person at the higher tier that you were excluded or disqualified at the time you entered into the covered transaction with that person, the agency may pursue any available remedies, including suspension and debarment.

§ 180.365 What must I do if I learn of information required under §180.355 after entering into a covered transaction with a higher tier participant?

At any time after you enter into a lower tier covered transaction with a person at a higher tier, you must provide immediate written notice to that person if you learn either that—

- (a) You failed to disclose information earlier, as required by §180.355; or
- (b) Due to changed circumstances, you or any of the principals for the transaction now meet any of the criteria in §180.355.

Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions

§ 180.400 May I enter into a transaction with an excluded or disqualified person?

- (a) You as a Federal agency official may not enter into a covered transaction with an excluded person unless you obtain an exception under §180.135.
- (b) You may not enter into any transaction with a person who is disqualified from that transaction, unless you obtain a waiver or exception under the statute, Executive order, or regulation that is the basis for the person's disqualification.

§ 180.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?

As a Federal agency official, you may not enter into a covered transaction with a participant if you know that a principal of the transaction is excluded, unless you obtain an exception under §180.135.

§ 180.410 May I approve a participant's use of the services of an excluded person?

After entering into a covered transaction with a participant, you as a Federal agency official may not approve a participant's use of an excluded person as a principal under that transaction, unless you obtain an exception under §180.135.

§ 180.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?

- (a) You as a Federal agency official may continue covered transactions with an excluded person, or under which an excluded person is a principal, if the transactions were in existence when the person was excluded. You are not required to continue the

transactions, however, and you may consider termination. You should make a decision about whether to terminate and the type of termination action, if any, only after a thorough review to ensure that the action is proper.

(b) You may not renew or extend covered transactions (other than no-cost time extensions) with any excluded person, or under which an excluded person is a principal, unless you obtain an exception under §180.135.

§ 180.420 May I approve a transaction with an excluded or disqualified person at a lower tier?

If a transaction at a lower tier is subject to your approval, you as a Federal agency official may not approve—

(a) A covered transaction with a person who is currently excluded, unless you obtain an exception under §180.135; or

(b) A transaction with a person who is disqualified from that transaction, unless you obtain a waiver or exception under the statute, Executive order, or regulation that is the basis for the person's disqualification.

§ 180.425 When do I check to see if a person is excluded or disqualified?

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As a Federal agency official, you must check to see if a person is excluded or disqualified before you—

(a) Enter into a primary tier covered transaction;

(b) Approve a principal in a primary tier covered transaction;

(c) Approve a lower tier participant if your agency's approval of the lower tier participant is required; or

(d) Approve a principal in connection with a lower tier transaction if your agency's approval of the principal is required.

§ 180.430 How do I check to see if a person is excluded or disqualified?

You check to see if a person is excluded or disqualified in two ways:

(a) You as a Federal agency official must check the EPLS when you take any action listed in §180.425.

(b) You must review information that a participant gives you, as required by §180.335, about its status or the status of the principals of a transaction.

§ 180.435 What must I require of a primary tier participant?

You as a Federal agency official must require each participant in a primary tier covered transaction to—

(a) Comply with subpart C of this part as a condition of participation in the transaction; and

(b) Communicate the requirement to comply with Subpart C of this part to persons at the next lower tier with whom the primary tier participant enters into covered transactions.

§ 180.440 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?

If a participant knowingly does business with an excluded or disqualified person, you as a Federal agency official may refer the matter for suspension and debarment consideration. You may also disallow costs, annul or terminate the transaction, issue a stop work order, or take any other appropriate remedy.

§ 180.445 What action may I take if a primary tier participant fails to disclose the information required under §180.335?

If you as a Federal agency official determine that a participant failed to disclose information, as required by §180.335, at the time it entered into a covered transaction with you, you may—

(a) Terminate the transaction for material failure to comply with the terms and conditions of the transaction; or

(b) Pursue any other available remedies, including suspension and debarment.

§ 180.450 What action may I take if a lower tier participant fails to disclose the information required under §180.355 to the next higher tier?

If you as a Federal agency official determine that a lower tier participant failed to disclose information, as required by §180.355, at the time it entered into a covered transaction with a participant at the next higher tier, you may pursue any remedies available to you, including the initiation of a suspension or debarment action.

Subpart E—Excluded Parties List System

§ 180.500 What is the purpose of the Excluded Parties List System (EPLS)?

The EPLS is a widely available source of the most current information about persons who are excluded or disqualified from covered transactions.

§ 180.505 Who uses the EPLS?

(a) Federal agency officials use the EPLS to determine whether to enter into a transaction with a person, as required under §180.430.

(b) Participants also may, but are not required to, use the EPLS to determine if—

(1) Principals of their transactions are excluded or disqualified, as required under §180.320; or

(2) Persons with whom they are entering into covered transactions at the next lower tier are excluded or disqualified.

(c) The EPLS is available to the general public.

§ 180.510 Who maintains the EPLS?

The General Services Administration (GSA) maintains the EPLS. When a Federal agency takes an action to exclude a person under the nonprocurement or procurement debarment and suspension system, the agency enters the information about the excluded person into the EPLS.

§ 180.515 What specific information is in the EPLS?

(a) At a minimum, the EPLS indicates—

(1) The full name (where available) and address of each excluded and disqualified person, in alphabetical order, with cross references if more than one name is involved in a single action;

(2) The type of action;

(3) The cause for the action;

(4) The scope of the action;

(5) Any termination date for the action;

(6) The Federal agency and name and telephone number of the agency point of contact for the action; and

(7) The Dun and Bradstreet Number (DUNS), or other similar code approved by the GSA, of the excluded or disqualified person, if available.

(b)(1) The database for the EPLS includes a field for the Taxpayer Identification Number (TIN) (the social security number (SSN) for an individual) of an excluded or disqualified person.

(2) Agencies disclose the SSN of an individual to verify the identity of an individual, only if permitted under the Privacy Act of 1974 and, if appropriate, the Computer Matching and Privacy Protection Act of 1988, as codified in 5 U.S.C. 552(a).

§ 180.520 Who places the information into the EPLS?

Federal agency officials who take actions to exclude persons under this part or officials who are responsible for identifying disqualified persons must enter the following information about those persons into the EPLS:

(a) Information required by §180.515(a);

(b) The Taxpayer Identification Number (TIN) of the excluded or disqualified person, including the social security number (SSN) for an individual, if the number is available and may be disclosed under law;

(c) Information about an excluded or disqualified person, generally within five working days, after—

(1) Taking an exclusion action;

(2) Modifying or rescinding an exclusion action;

(3) Finding that a person is disqualified; or

(4) Finding that there has been a change in the status of a person who is listed as disqualified.

§ 180.525 Whom do I ask if I have questions about a person in the EPLS?

If you have questions about a listed person in the EPLS, ask the point of contact for the Federal agency that placed the person's name into the EPLS. You may find the agency point of contact from the EPLS.

§ 180.530 Where can I find the EPLS?

You may access the EPLS through the Internet, currently at <http://epls.arnet.gov> or <http://www.epls.gov>.

Subpart F—General Principles Relating to Suspension and Debarment Actions

§ 180.600 How do suspension and debarment actions start?

When Federal agency officials receive information from any source concerning a cause for suspension or debarment, they will promptly report it and the agency will investigate. The officials refer the question of whether to suspend or debar you to their suspending or debarring official for consideration, if appropriate.

§ 180.605 How does suspension differ from debarment?

Suspension differs from debarment in that—

A suspending official . . .	A debarring official . . .
(a) Imposes suspension as a temporary status of ineligibility for procurement and nonprocurement transactions, pending completion of an investigation or legal proceedings	Imposes debarment for a specified period as a final determination that a person is not presently responsible.
(b) Must—	
(1) Have <i>adequate evidence</i> that there may be a cause for debarment of a person; and	
(2) Conclude that <i>immediate action</i> is necessary to protect the Federal interest	Must conclude, based on a <i>preponderance of the evidence</i> , that the person has engaged in conduct that warrants debarment.
(c) Usually imposes the suspension <i>first</i> , and then promptly notifies the suspended person, giving the person an opportunity to contest the suspension and have it lifted	Imposes debarment <i>after</i> giving the respondent notice of the action and an opportunity to contest the proposed debarment.

§ 180.610 What procedures does a Federal agency use in suspension and debarment actions?

In deciding whether to suspend or debar you, a Federal agency handles the actions as informally as practicable, consistent with principles of fundamental fairness.

(a) For suspension actions, a Federal agency uses the procedures in this subpart and Subpart G of this part.

(b) For debarment actions, a Federal agency uses the procedures in this subpart and Subpart H of this part.

§ 180.615 How does a Federal agency notify a person of a suspension or debarment action?

(a) The suspending or debarring official sends a written notice to the last known street address, facsimile number, or e-mail address of—

(1) You or your identified counsel; or

(2) Your agent for service of process, or any of your partners, officers, directors, owners, or joint venturers.

(b) The notice is effective if sent to any of these persons.

§ 180.620 Do Federal agencies coordinate suspension and debarment actions?

Yes, when more than one Federal agency has an interest in a suspension or debarment, the agencies may consider designating one agency as the lead agency for making the decision. Agencies are encouraged to establish methods and procedures for coordinating their suspension and debarment actions.

§ 180.625 What is the scope of a suspension or debarment?

If you are suspended or debarred, the suspension or debarment is effective as follows:

(a) Your suspension or debarment constitutes suspension or debarment of all of your divisions and other organizational elements from all covered transactions, unless the suspension or debarment decision is limited—

(1) By its terms to one or more specifically identified individuals, divisions, or other organizational elements; or

(2) To specific types of transactions.

(b) Any affiliate of a participant may be included in a suspension or debarment action if the suspending or debarring official—

(1) Officially names the affiliate in the notice; and

(2) Gives the affiliate an opportunity to contest the action.

§ 180.630 May a Federal agency impute the conduct of one person to another?

For purposes of actions taken under this part, a Federal agency may impute conduct as follows:

(a) *Conduct imputed from an individual to an organization.* A Federal agency may impute the fraudulent, criminal, or other improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with an organization, to that organization when the improper conduct occurred in connection with the individual's

performance of duties for or on behalf of that organization, or with the organization's knowledge, approval or acquiescence. The organization's acceptance of the benefits derived from the conduct is evidence of knowledge, approval or acquiescence.

(b) *Conduct imputed from an organization to an individual, or between individuals.* A Federal agency may impute the fraudulent, criminal, or other improper conduct of any organization to an individual, or from one individual to another individual, if the individual to whom the improper conduct is imputed either participated in, had knowledge of, or reason to know of the improper conduct.

(c) *Conduct imputed from one organization to another organization.* A Federal agency may impute the fraudulent, criminal, or other improper conduct of one organization to another organization when the improper conduct occurred in connection with a partnership, joint venture, joint application, association or similar arrangement, or when the organization to whom the improper conduct is imputed has the power to direct, manage, control or influence the activities of the organization responsible for the improper conduct. Acceptance of the benefits derived from the conduct is evidence of knowledge, approval or acquiescence.

§ 180.635 May a Federal agency settle a debarment or suspension action?

Yes, a Federal agency may settle a debarment or suspension action at any time if it is in the best interest of the Federal Government.

§ 180.640 May a settlement include a voluntary exclusion?

Yes, if a Federal agency enters into a settlement with you in which you agree to be excluded, it is called a voluntary exclusion and has governmentwide effect.

§ 180.645 Do other Federal agencies know if an agency agrees to a voluntary exclusion?

(a) Yes, the Federal agency agreeing to the voluntary exclusion enters information about it into the EPLS.

(b) Also, any agency or person may contact the Federal agency that agreed to the voluntary exclusion to find out the details of the voluntary exclusion.

Subpart G—Suspension

§ 180.700 When may the suspending official issue a suspension?

Suspension is a serious action. Using the procedures of this subpart and Subpart F of this part, the suspending official may impose suspension only when that official determines that—

(a) There exists an indictment for, or other adequate evidence to suspect, an offense listed under §180.800(a), or

(b) There exists adequate evidence to suspect any other cause for debarment listed under §180.800(b) through (d); and

(c) Immediate action is necessary to protect the public interest.

§ 180.705 What does the suspending official consider in issuing a suspension?

(a) In determining the adequacy of the evidence to support the suspension, the suspending official considers how much information is available, how credible it is given the circumstances, whether or not important allegations are corroborated, and what inferences can reasonably be drawn as a result. During this assessment, the suspending official may examine the basic documents, including grants, cooperative agreements, loan authorizations, contracts, and other relevant documents.

(b) An indictment, conviction, civil judgment, or other official findings by Federal, State, or local bodies that determine factual and/or legal matters, constitutes adequate evidence for purposes of suspension actions.

(c) In deciding whether immediate action is needed to protect the public interest, the suspending official has wide discretion. For example, the suspending official may infer the necessity for immediate action to protect the public interest either from the nature of the circumstances giving rise to a cause for suspension or from potential business relationships or involvement with a program of the Federal Government.

§ 180.710 When does a suspension take effect?

A suspension is effective when the suspending official signs the decision to suspend.

§ 180.715 What notice does the suspending official give me if I am suspended?

After deciding to suspend you, the suspending official promptly sends you a Notice of Suspension advising you—

(a) That you have been suspended;

(b) That your suspension is based on—

(1) An indictment;

(2) A conviction;

(3) Other adequate evidence that you have committed irregularities which seriously reflect on the propriety of further Federal Government dealings with you; or

- (4) Conduct of another person that has been imputed to you, or your affiliation with a suspended or debarred person;
- (c) Of any other irregularities in terms sufficient to put you on notice without disclosing the Federal Government's evidence;
- (d) Of the cause(s) upon which the suspending official relied under §180.700 for imposing suspension;
- (e) That your suspension is for a temporary period pending the completion of an investigation or resulting legal or debarment proceedings;
- (f) Of the applicable provisions of this subpart, Subpart F of this part, and any other agency procedures governing suspension decisionmaking; and
- (g) Of the governmentwide effect of your suspension from procurement and nonprocurement programs and activities.

§ 180.720 How may I contest a suspension?

If you as a respondent wish to contest a suspension, you or your representative must provide the suspending official with information in opposition to the suspension. You may do this orally or in writing, but any information provided orally that you consider important must also be submitted in writing for the official record.

§ 180.725 How much time do I have to contest a suspension?

- (a) As a respondent you or your representative must either send, or make arrangements to appear and present, the information and argument to the suspending official within 30 days after you receive the Notice of Suspension.
- (b) The Federal agency taking the action considers the notice to be received by you—
 - (1) When delivered, if the agency mails the notice to the last known street address, or five days after the agency sends it if the letter is undeliverable;
 - (2) When sent, if the agency sends the notice by facsimile or five days after the agency sends it if the facsimile is undeliverable; or
 - (3) When delivered, if the agency sends the notice by e-mail or five days after the agency sends it if the e-mail is undeliverable.

§ 180.730 What information must I provide to the suspending official if I contest the suspension?

(a) In addition to any information and argument in opposition, as a respondent your submission to the suspending official must identify—

(1) Specific facts that contradict the statements contained in the Notice of Suspension. A general denial is insufficient to raise a genuine dispute over facts material to the suspension;

(2) All existing, proposed, or prior exclusions under regulations implementing Executive Order 12549 and all similar actions taken by Federal, State, or local agencies, including administrative agreements that affect only those agencies;

(3) All criminal and civil proceedings not included in the Notice of Suspension that grew out of facts relevant to the cause(s) stated in the notice; and

(4) All of your affiliates.

(b) If you fail to disclose this information, or provide false information, the Federal agency taking the action may seek further criminal, civil or administrative action against you, as appropriate.

§ 180.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?

(a) You as a respondent will not have an additional opportunity to challenge the facts if the suspending official determines that—

(1) Your suspension is based upon an indictment, conviction, civil judgment, or other finding by a Federal, State, or local body for which an opportunity to contest the facts was provided;

(2) Your presentation in opposition contains only general denials to information contained in the Notice of Suspension;

(3) The issues raised in your presentation in opposition to the suspension are not factual in nature, or are not material to the suspending official's initial decision to suspend, or the official's decision whether to continue the suspension; or

(4) On the basis of advice from the Department of Justice, an office of the United States Attorney, a State attorney general's office, or a State or local prosecutor's office, that substantial interests of the government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced by conducting fact-finding.

(b) You will have an opportunity to challenge the facts if the suspending official determines that—

- (1) The conditions in paragraph (a) of this section do not exist; and
- (2) Your presentation in opposition raises a genuine dispute over facts material to the suspension.
- (c) If you have an opportunity to challenge disputed material facts under this section, the suspending official or designee must conduct additional proceedings to resolve those facts.

§ 180.740 Are suspension proceedings formal?

- (a) Suspension proceedings are conducted in a fair and informal manner. The suspending official may use flexible procedures to allow you to present matters in opposition. In so doing, the suspending official is not required to follow formal rules of evidence or procedure in creating an official record upon which the official will base a final suspension decision.
- (b) You as a respondent or your representative must submit any documentary evidence you want the suspending official to consider.

§ 180.745 How is fact-finding conducted?

- (a) If fact-finding is conducted—
 - (1) You may present witnesses and other evidence, and confront any witness presented; and
 - (2) The fact-finder must prepare written findings of fact for the record.
- (b) A transcribed record of fact-finding proceedings must be made, unless you as a respondent and the Federal agency agree to waive it in advance. If you want a copy of the transcribed record, you may purchase it.

§ 180.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?

- (a) The suspending official bases the decision on all information contained in the official record. The record includes—
 - (1) All information in support of the suspending official's initial decision to suspend you;
 - (2) Any further information and argument presented in support of, or opposition to, the suspension; and
 - (3) Any transcribed record of fact-finding proceedings.

(b) The suspending official may refer disputed material facts to another official for findings of fact. The suspending official may reject any resulting findings, in whole or in part, only after specifically determining them to be arbitrary, capricious, or clearly erroneous.

§ 180.755 When will I know whether the suspension is continued or terminated?

The suspending official must make a written decision whether to continue, modify, or terminate your suspension within 45 days of closing the official record. The official record closes upon the suspending official's receipt of final submissions, information and findings of fact, if any. The suspending official may extend that period for good cause.

§ 180.760 How long may my suspension last?

(a) If legal or debarment proceedings are initiated at the time of, or during your suspension, the suspension may continue until the conclusion of those proceedings. However, if proceedings are not initiated, a suspension may not exceed 12 months.

(b) The suspending official may extend the 12 month limit under paragraph (a) of this section for an additional 6 months if an office of a U.S. Assistant Attorney General, U.S. Attorney, or other responsible prosecuting official requests an extension in writing. In no event may a suspension exceed 18 months without initiating proceedings under paragraph (a) of this section.

(c) The suspending official must notify the appropriate officials under paragraph (b) of this section of an impending termination of a suspension at least 30 days before the 12 month period expires to allow the officials an opportunity to request an extension.

Subpart H—Debarment

§ 180.800 What are the causes for debarment?

A Federal agency may debar a person for—

(a) Conviction of or civil judgment for—

(1) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction;

(2) Violation of Federal or State antitrust statutes, including those proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging;

(3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice; or

(4) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects your present responsibility;

(b) Violation of the terms of a public agreement or transaction so serious as to affect the integrity of an agency program, such as—

(1) A willful failure to perform in accordance with the terms of one or more public agreements or transactions;

(2) A history of failure to perform or of unsatisfactory performance of one or more public agreements or transactions; or

(3) A willful violation of a statutory or regulatory provision or requirement applicable to a public agreement or transaction;

(c) Any of the following causes:

(1) A nonprocurement debarment by any Federal agency taken before October 1, 1988, or a procurement debarment by any Federal agency taken pursuant to 48 CFR part 9, subpart 9.4, before August 25, 1995;

(2) Knowingly doing business with an ineligible person, except as permitted under §180.135;

(3) Failure to pay a single substantial debt, or a number of outstanding debts (including disallowed costs and overpayments, but not including sums owed the Federal Government under the Internal Revenue Code) owed to any Federal agency or instrumentality, provided the debt is uncontested by the debtor or, if contested, provided that the debtor's legal and administrative remedies have been exhausted;

(4) Violation of a material provision of a voluntary exclusion agreement entered into under §180.640 or of any settlement of a debarment or suspension action; or

(5) Violation of the provisions of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701); or

(d) Any other cause of so serious or compelling a nature that it affects your present responsibility.

§ 180.805 What notice does the debarring official give me if I am proposed for debarment?

After consideration of the causes in §180.800, if the debarring official proposes to debar you, the official sends you a Notice of Proposed Debarment, pursuant to §180.615, advising you—

- (a) That the debarring official is considering debarring you;
- (b) Of the reasons for proposing to debar you in terms sufficient to put you on notice of the conduct or transactions upon which the proposed debarment is based;
- (c) Of the cause(s) under §180.800 upon which the debarring official relied for proposing your debarment;
- (d) Of the applicable provisions of this subpart, Subpart F of this part, and any other agency procedures governing debarment; and
- (e) Of the governmentwide effect of a debarment from procurement and nonprocurement programs and activities.

§ 180.810 When does a debarment take effect?

Unlike suspension, a debarment is not effective until the debarring official issues a decision. The debarring official does not issue a decision until the respondent has had an opportunity to contest the proposed debarment.

§ 180.815 How may I contest a proposed debarment?

If you as a respondent wish to contest a proposed debarment, you or your representative must provide the debarring official with information in opposition to the proposed debarment. You may do this orally or in writing, but any information provided orally that you consider important must also be submitted in writing for the official record.

§ 180.820 How much time do I have to contest a proposed debarment?

- (a) As a respondent you or your representative must either send, or make arrangements to appear and present, the information and argument to the debarring official within 30 days after you receive the Notice of Proposed Debarment.
- (b) The Federal agency taking the action considers the Notice of Proposed Debarment to be received by you—
 - (1) When delivered, if the agency mails the notice to the last known street address, or five days after the agency sends it if the letter is undeliverable;
 - (2) When sent, if the agency sends the notice by facsimile or five days after the agency sends it if the facsimile is undeliverable; or
 - (3) When delivered, if the agency sends the notice by e-mail or five days after the agency sends it if the e-mail is undeliverable.

§ 180.825 What information must I provide to the debarring official if I contest the proposed debarment?

(a) In addition to any information and argument in opposition, as a respondent your submission to the debarring official must identify—

(1) Specific facts that contradict the statements contained in the Notice of Proposed Debarment. Include any information about any of the factors listed in §180.860. A general denial is insufficient to raise a genuine dispute over facts material to the debarment;

(2) All existing, proposed, or prior exclusions under regulations implementing Executive Order 12549 and all similar actions taken by Federal, State, or local agencies, including administrative agreements that affect only those agencies;

(3) All criminal and civil proceedings not included in the Notice of Proposed Debarment that grew out of facts relevant to the cause(s) stated in the notice; and

(4) All of your affiliates.

(b) If you fail to disclose this information, or provide false information, the Federal agency taking the action may seek further criminal, civil or administrative action against you, as appropriate.

§ 180.830 Under what conditions do I get an additional opportunity to challenge the facts on which the proposed debarment is based?

(a) You as a respondent will not have an additional opportunity to challenge the facts if the debarring official determines that—

(1) Your debarment is based upon a conviction or civil judgment;

(2) Your presentation in opposition contains only general denials to information contained in the Notice of Proposed Debarment; or

(3) The issues raised in your presentation in opposition to the proposed debarment are not factual in nature, or are not material to the debarring official's decision whether to debar.

(b) You will have an additional opportunity to challenge the facts if the debarring official determines that—

(1) The conditions in paragraph (a) of this section do not exist; and

(2) Your presentation in opposition raises a genuine dispute over facts material to the proposed debarment.

(c) If you have an opportunity to challenge disputed material facts under this section, the debarring official or designee must conduct additional proceedings to resolve those facts.

§ 180.835 Are debarment proceedings formal?

(a) Debarment proceedings are conducted in a fair and informal manner. The debarring official may use flexible procedures to allow you as a respondent to present matters in opposition. In so doing, the debarring official is not required to follow formal rules of evidence or procedure in creating an official record upon which the official will base the decision whether to debar.

(b) You or your representative must submit any documentary evidence you want the debarring official to consider.

§ 180.840 How is fact-finding conducted?

(a) If fact-finding is conducted—

(1) You may present witnesses and other evidence, and confront any witness presented; and

(2) The fact-finder must prepare written findings of fact for the record.

(b) A transcribed record of fact-finding proceedings must be made, unless you as a respondent and the Federal agency agree to waive it in advance. If you want a copy of the transcribed record, you may purchase it.

§ 180.845 What does the debarring official consider in deciding whether to debar me?

(a) The debarring official may debar you for any of the causes in §180.800. However, the official need not debar you even if a cause for debarment exists. The official may consider the seriousness of your acts or omissions and the mitigating or aggravating factors set forth at §180.860.

(b) The debarring official bases the decision on all information contained in the official record. The record includes—

(1) All information in support of the debarring official's proposed debarment;

(2) Any further information and argument presented in support of, or in opposition to, the proposed debarment; and

(3) Any transcribed record of fact-finding proceedings.

(c) The debarring official may refer disputed material facts to another official for findings of fact. The debarring official may reject any resultant findings, in whole or in part, only after specifically determining them to be arbitrary, capricious, or clearly erroneous.

§ 180.850 What is the standard of proof in a debarment action?

(a) In any debarment action, the Federal agency must establish the cause for debarment by a preponderance of the evidence.

(b) If the proposed debarment is based upon a conviction or civil judgment, the standard of proof is met.

§ 180.855 Who has the burden of proof in a debarment action?

(a) The Federal agency has the burden to prove that a cause for debarment exists.

(b) Once a cause for debarment is established, you as a respondent have the burden of demonstrating to the satisfaction of the debarring official that you are presently responsible and that debarment is not necessary.

§ 180.860 What factors may influence the debarring official's decision?

This section lists the mitigating and aggravating factors that the debarring official may consider in determining whether to debar you and the length of your debarment period. The debarring official may consider other factors if appropriate in light of the circumstances of a particular case. The existence or nonexistence of any factor, such as one of those set forth in this section, is not necessarily determinative of your present responsibility. In making a debarment decision, the debarring official may consider the following factors:

(a) The actual or potential harm or impact that results or may result from the wrongdoing.

(b) The frequency of incidents and/or duration of the wrongdoing.

(c) Whether there is a pattern or prior history of wrongdoing. For example, if you have been found by another Federal agency or a State agency to have engaged in wrongdoing similar to that found in the debarment action, the existence of this fact may be used by the debarring official in determining that you have a pattern or prior history of wrongdoing.

(d) Whether you are or have been excluded or disqualified by an agency of the Federal Government or have not been allowed to participate in State or local contracts or assistance agreements on a basis of conduct similar to one or more of the causes for debarment specified in this part.

(e) Whether you have entered into an administrative agreement with a Federal agency or a State or local government that is not governmentwide but is based on conduct similar to one or more of the causes for debarment specified in this part.

(f) Whether and to what extent you planned, initiated, or carried out the wrongdoing.

(g) Whether you have accepted responsibility for the wrongdoing and recognize the seriousness of the misconduct that led to the cause for debarment.

(h) Whether you have paid or agreed to pay all criminal, civil and administrative liabilities for the improper activity, including any investigative or administrative costs incurred by the government, and have made or agreed to make full restitution.

(i) Whether you have cooperated fully with the government agencies during the investigation and any court or administrative action. In determining the extent of cooperation, the debarring official may consider when the cooperation began and whether you disclosed all pertinent information known to you.

(j) Whether the wrongdoing was pervasive within your organization.

(k) The kind of positions held by the individuals involved in the wrongdoing.

(l) Whether your organization took appropriate corrective action or remedial measures, such as establishing ethics training and implementing programs to prevent recurrence.

(m) Whether your principals tolerated the offense.

(n) Whether you brought the activity cited as a basis for the debarment to the attention of the appropriate government agency in a timely manner.

(o) Whether you have fully investigated the circumstances surrounding the cause for debarment and, if so, made the result of the investigation available to the debarring official.

(p) Whether you had effective standards of conduct and internal control systems in place at the time the questioned conduct occurred.

(q) Whether you have taken appropriate disciplinary action against the individuals responsible for the activity which constitutes the cause for debarment.

(r) Whether you have had adequate time to eliminate the circumstances within your organization that led to the cause for the debarment.

(s) Other factors that are appropriate to the circumstances of a particular case.

§ 180.865 How long may my debarment last?

(a) If the debarring official decides to debar you, your period of debarment will be based on the seriousness of the cause(s) upon which your debarment is based. Generally, debarment should not exceed three years. However, if circumstances warrant, the debarring official may impose a longer period of debarment.

(b) In determining the period of debarment, the debarring official may consider the factors in §180.860. If a suspension has preceded your debarment, the debarring official must consider the time you were suspended.

(c) If the debarment is for a violation of the provisions of the Drug-Free Workplace Act of 1988, your period of debarment may not exceed five years.

§ 180.870 When do I know if the debarring official debars me?

(a) The debarring official must make a written decision whether to debar within 45 days of closing the official record. The official record closes upon the debarring official's receipt of final submissions, information and findings of fact, if any. The debarring official may extend that period for good cause.

(b) The debarring official sends you written notice, pursuant to §180.615 that the official decided, either—

(1) Not to debar you; or

(2) To debar you. In this event, the notice:

(i) Refers to the Notice of Proposed Debarment;

(ii) Specifies the reasons for your debarment;

(iii) States the period of your debarment, including the effective dates; and

(iv) Advises you that your debarment is effective for covered transactions and contracts that are subject to the Federal Acquisition Regulation (48 CFR chapter 1), throughout the executive branch of the Federal Government unless an agency head or an authorized designee grants an exception.

§ 180.875 May I ask the debarring official to reconsider a decision to debar me?

Yes, as a debarred person you may ask the debarring official to reconsider the debarment decision or to reduce the time period or scope of the debarment. However, you must put your request in writing and support it with documentation.

§ 180.880 What factors may influence the debarring official during reconsideration?

The debarring official may reduce or terminate your debarment based on—

- (a) Newly discovered material evidence;
- (b) A reversal of the conviction or civil judgment upon which your debarment was based;
- (c) A bona fide change in ownership or management;
- (d) Elimination of other causes for which the debarment was imposed; or
- (e) Other reasons the debarring official finds appropriate.

§ 180.885 May the debarring official extend a debarment?

- (a) Yes, the debarring official may extend a debarment for an additional period, if that official determines that an extension is necessary to protect the public interest.
- (b) However, the debarring official may not extend a debarment solely on the basis of the facts and circumstances upon which the initial debarment action was based.
- (c) If the debarring official decides that a debarment for an additional period is necessary, the debarring official must follow the applicable procedures in this subpart, and Subpart F of this part, to extend the debarment.

Subpart I—Definitions

§ 180.900 Adequate evidence.

Adequate evidence means information sufficient to support the reasonable belief that a particular act or omission has occurred.

§ 180.905 Affiliate.

Persons are *affiliates* of each other if, directly or indirectly, either one controls or has the power to control the other or a third person controls or has the power to control both. The ways a Federal agency may determine control include, but are not limited to—

- (a) Interlocking management or ownership;
- (b) Identity of interests among family members;
- (c) Shared facilities and equipment;
- (d) Common use of employees; or

(e) A business entity which has been organized following the exclusion of a person which has the same or similar management, ownership, or principal employees as the excluded person.

§ 180.910 Agent or representative.

Agent or representative means any person who acts on behalf of, or who is authorized to commit a participant in a covered transaction.

§ 180.915 Civil judgment.

Civil judgment means the disposition of a civil action by any court of competent jurisdiction, whether by verdict, decision, settlement, stipulation, other disposition which creates a civil liability for the complained of wrongful acts, or a final determination of liability under the Program Fraud Civil Remedies Act of 1988 (31 U.S.C. 3801–3812).

§ 180.920 Conviction.

Conviction means—

(a) A judgment or any other determination of guilt of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or plea, including a plea of nolo contendere; or

(b) Any other resolution that is the functional equivalent of a judgment, including probation before judgment and deferred prosecution. A disposition without the participation of the court is the functional equivalent of a judgment only if it includes an admission of guilt.

§ 180.925 Debarment.

Debarment means an action taken by a debarring official under Subpart H of this part to exclude a person from participating in covered transactions and transactions covered under the Federal Acquisition Regulation (48 CFR chapter 1). A person so excluded is debarred.

§ 180.930 Debarring official.

Debarring official means an agency official who is authorized to impose debarment. A debarring official is either—

(a) The agency head; or

(b) An official designated by the agency head.

§ 180.935 Disqualified.

Disqualified means that a person is prohibited from participating in specified Federal procurement or nonprocurement transactions as required under a statute, Executive order (other than Executive Orders 12549 and 12689) or other authority. Examples of disqualifications include persons prohibited under—

- (a) The Davis-Bacon Act (40 U.S.C. 276(a));
- (b) The equal employment opportunity acts and Executive orders; or
- (c) The Clean Air Act (42 U.S.C. 7606), Clean Water Act (33 U.S.C. 1368) and Executive Order 11738 (3 CFR, 1973 Comp., p. 799).

§ 180.940 Excluded or exclusion.

Excluded or exclusion means—

- (a) That a person or commodity is prohibited from being a participant in covered transactions, whether the person has been suspended; debarred; proposed for debarment under 48 CFR part 9, subpart 9.4; voluntarily excluded; or
- (b) The act of excluding a person.

§ 180.945 Excluded Parties List System (EPLS).

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.

§ 180.950 Federal agency.

Federal agency means any United States executive department, military department, defense agency or any other agency of the executive branch. Other agencies of the Federal government are not considered “agencies” for the purposes of this part unless they issue regulations adopting the governmentwide Debarment and Suspension system under Executive Orders 12549 and 12689.

§ 180.955 Indictment.

Indictment means an indictment for a criminal offense. A presentment, information, or other filing by a competent authority charging a criminal offense shall be given the same effect as an indictment.

§ 180.960 Ineligible or ineligibility.

Ineligible or ineligibility means that a person or commodity is prohibited from covered transactions because of an exclusion or disqualification.

§ 180.965 Legal proceedings.

Legal proceedings means any criminal proceeding or any civil judicial proceeding, including a proceeding under the Program Fraud Civil Remedies Act (31 U.S.C. 3801–3812), to which the Federal Government or a State or local government or quasi-governmental authority is a party. The term also includes appeals from those proceedings.

§ 180.970 Nonprocurement transaction.

(a) *Nonprocurement transaction* means any transaction, regardless of type (except procurement contracts), including, but not limited to the following:

- (1) Grants.
- (2) Cooperative agreements.
- (3) Scholarships.
- (4) Fellowships.
- (5) Contracts of assistance.
- (6) Loans.
- (7) Loan guarantees.
- (8) Subsidies.
- (9) Insurances.
- (10) Payments for specified uses.
- (11) Donation agreements.

(b) A nonprocurement transaction at any tier does not require the transfer of Federal funds.

§ 180.975 Notice.

Notice means a written communication served in person, sent by certified mail or its equivalent, or sent electronically by e-mail or facsimile. (See §180. 615.)

§ 180.980 Participant.

Participant means any person who submits a proposal for or who enters into a covered transaction, including an agent or representative of a participant.

§ 180.985 Person.

Person means any individual, corporation, partnership, association, unit of government, or legal entity, however organized.

§ 180.990 Preponderance of the evidence.

Preponderance of the evidence means proof by information that, compared with information opposing it, leads to the conclusion that the fact at issue is more probably true than not.

§ 180.995 Principal.

Principal means—

- (a) An officer, director, owner, partner, principal investigator, or other person within a participant with management or supervisory responsibilities related to a covered transaction; or
- (b) A consultant or other person, whether or not employed by the participant or paid with Federal funds, who—
 - (1) Is in a position to handle Federal funds;
 - (2) Is in a position to influence or control the use of those funds; or,
 - (3) Occupies a technical or professional position capable of substantially influencing the development or outcome of an activity required to perform the covered transaction.

§ 180.1000 Respondent.

Respondent means a person against whom an agency has initiated a debarment or suspension action.

§ 180.1005 State.

- (a) *State* means—
 - (1) Any of the states of the United States;
 - (2) The District of Columbia;
 - (3) The Commonwealth of Puerto Rico;
 - (4) Any territory or possession of the United States; or

(5) Any agency or instrumentality of a state.

(b) For purposes of this part, *State* does not include institutions of higher education, hospitals, or units of local government.

§ 180.1010 Suspending official.

(a) *Suspending official* means an agency official who is authorized to impose suspension. The suspending official is either:

(1) The agency head; or

(2) An official designated by the agency head.

§ 180.1015 Suspension.

Suspension is an action taken by a suspending official under subpart G of this part that immediately prohibits a person from participating in covered transactions and transactions covered under the Federal Acquisition Regulation (48 CFR chapter 1) for a temporary period, pending completion of an agency investigation and any judicial or administrative proceedings that may ensue. A person so excluded is suspended.

§ 180.1020 Voluntary exclusion or voluntarily excluded.

(a) *Voluntary exclusion* means a person's agreement to be excluded under the terms of a settlement between the person and one or more agencies. Voluntary exclusion must have governmentwide effect.

(b) *Voluntarily excluded* means the status of a person who has agreed to a voluntary exclusion.

Appendix to Part 180—Covered Transactions

Title 2: Grants and Agreements

PART 215—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, AND OTHER

NON-PROFIT ORGANIZATIONS (OMB CIRCULAR A-110)

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

Source: 69 FR 26281, May 11, 2004, unless otherwise noted.

§ 215.0 About this part.

(a) *Purpose.* This part contains OMB guidance to Federal agencies on the administration of grants to and agreements with institutions of higher education, hospitals, and other

non-profit organizations. The guidance sets forth standards for obtaining consistency and uniformity in the agencies' administration of those grants and agreements.

(b) *Applicability.* (1) Except as provided herein, the standards set forth in this part are applicable to all Federal agencies. If any statute specifically prescribes policies or specific requirements that differ from the standards provided in this part, the provisions of the statute shall govern.

(2) The provisions of subparts A through D of this part shall be applied by Federal agencies to recipients. Recipients shall apply the provisions of those subparts to subrecipients performing substantive work under grants and agreements that are passed through or awarded by the primary recipient, if such subrecipients are organizations described in paragraph (a) of this section.

(3) This part does not apply to grants, contracts, or other agreements between the Federal Government and units of State or local governments covered by OMB Circular A-102, "Grants and Cooperative Agreements with State and Local Governments"¹ and the Federal agencies' grants management common rule (see §215.5) which standardize the administrative requirements Federal agencies impose on State and local grantees. In addition, subawards and contracts to State or local governments are not covered by this part. However, this part applies to subawards made by State and local governments to organizations covered by this part.

¹See 5 CFR 1310.9 for availability of OMB circulars.

(4) Federal agencies may apply the provisions of subparts A through D of this part to commercial organizations, foreign governments, organizations under the jurisdiction of foreign governments, and international organizations.

(c) *OMB responsibilities.* OMB is responsible for:

(1) Issuing and maintaining the guidance in this part.

(2) Interpreting the policy requirements in this part and providing assistance to ensure effective and efficient implementation.

(3) Reviewing Federal agency regulations implementing the guidance in this part, as required by Executive Order 12866.

(4) Granting any deviations to Federal agencies from the guidance in this part, as provided in §215.4. Exceptions will only be made in particular cases where adequate justification is presented.

(5) Conducting broad oversight of government-wide compliance with the guidance in this part.

(d) *Federal agency responsibilities.* The head of each Federal agency that awards and administers grants and agreements subject to the guidance in this part is responsible for:

(1) Implementing the guidance in subparts A through D of this part by adopting the language in those subparts unless different provisions are required by Federal statute or are approved by OMB.

(2) Ensuring that the agency's components and subcomponents comply with the agency's implementation of the guidance in subparts A through D of this part.

(3) Requesting approval from OMB for deviations from the guidance in subparts A through D of this part in situations where the guidance requires that approval.

(4) Performing other functions specified in this part.

(e) *Relationship to previous issuance.* The guidance in this part previously was issued as OMB Circular A-110. Subparts A through D of this part contain the guidance that was in the attachment to the OMB circular. Appendix A to this part contains the guidance that was in the appendix to the attachment.

(f) *Information Contact.* Further information concerning this part may be obtained by contacting the Office of Federal Financial Management, Office of Management and Budget, Washington, DC 20503, telephone (202) 395-3993.

(g) *Termination Review Date.* This part will have a policy review three years from the date of issuance.

Subpart A—General

§ 215.1 Purpose.

This part establishes uniform administrative requirements for Federal grants and agreements awarded to institutions of higher education, hospitals, and other non-profit organizations. Federal awarding agencies shall not impose additional or inconsistent requirements, except as provided in §215.4, and §215.14 or unless specifically required by Federal statute or executive order. Non-profit organizations that implement Federal programs for the States are also subject to State requirements.

§ 215.2 Definitions.

(a) *Accrued expenditures* means the charges incurred by the recipient during a given period requiring the provision of funds for:

(1) Goods and other tangible property received;

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

(3) Other amounts becoming owed under programs for which no current services or performance is required.

(b) *Accrued income* means the sum of:

(1) Earnings during a given period from:

(i) Services performed by the recipient, and

(ii) Goods and other tangible property delivered to purchasers, and

(2) Amounts becoming owed to the recipient for which no current services or performance is required by the recipient.

(c) *Acquisition cost of equipment* means the net invoice price of the equipment, including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Other charges, such as the cost of installation, transportation, taxes, duty or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the recipient's regular accounting practices.

(d) *Advance* means a payment made by Treasury check or other appropriate payment mechanism to a recipient upon its request either before outlays are made by the recipient or through the use of predetermined payment schedules.

(e) *Award* means financial assistance that provides support or stimulation to accomplish a public purpose. Awards include grants and other agreements in the form of money or property in lieu of money, by the Federal Government to an eligible recipient. The term does not include: technical assistance, which provides services instead of money; other assistance in the form of loans, loan guarantees, interest subsidies, or insurance; direct payments of any kind to individuals; and, contracts which are required to be entered into and administered under procurement laws and regulations.

(f) *Cash contributions* means the recipient's cash outlay, including the outlay of money contributed to the recipient by third parties.

(g) *Closeout* means the process by which a Federal awarding agency determines that all applicable administrative actions and all required work of the award have been completed by the recipient and Federal awarding agency.

(h) *Contract* means a procurement contract under an award or subaward, and a procurement subcontract under a recipient's or subrecipient's contract.

(i) *Cost sharing or matching* means that portion of project or program costs not borne by the Federal Government.

(j) *Date of completion* means the date on which all work under an award is completed or the date on the award document, or any supplement or amendment thereto, on which Federal sponsorship ends.

(k) *Disallowed costs* means those charges to an award that the Federal awarding agency determines to be unallowable, in accordance with the applicable Federal cost principles or other terms and conditions contained in the award.

(l) *Equipment* means tangible nonexpendable personal property including exempt property charged directly to the award having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit. However, consistent with recipient policy, lower limits may be established.

(m) *Excess property* means property under the control of any Federal awarding agency that, as determined by the head thereof, is no longer required for its needs or the discharge of its responsibilities.

(n) *Exempt property* means tangible personal property acquired in whole or in part with Federal funds, where the Federal awarding agency has statutory authority to vest title in the recipient without further obligation to the Federal Government. An example of exempt property authority is contained in the Federal Grant and Cooperative Agreement Act (31 U.S.C. 6306), for property acquired under an award to conduct basic or applied research by a non-profit institution of higher education or non-profit organization whose principal purpose is conducting scientific research.

(o) *Federal awarding agency* means the Federal agency that provides an award to the recipient.

(p) *Federal funds authorized* means the total amount of Federal funds obligated by the Federal Government for use by the recipient. This amount may include any authorized carryover of unobligated funds from prior funding periods when permitted by agency regulations or agency implementing instructions.

(q) *Federal share* of real property, equipment, or supplies means that percentage of the property's acquisition costs and any improvement expenditures paid with Federal funds.

(r) *Funding period* means the period of time when Federal funding is available for obligation by the recipient.

(s) *Intangible property and debt instruments* means, but is not limited to, trademarks, copyrights, patents and patent applications and such property as loans, notes and other debt instruments, lease agreements, stock and other instruments of property ownership, whether considered tangible or intangible.

(t) *Obligations* means the amounts of orders placed, contracts and grants awarded, services received and similar transactions during a given period that require payment by the recipient during the same or a future period.

(u) *Outlays or expenditures* means charges made to the project or program. They may be reported on a cash or accrual basis. For reports prepared on a cash basis, outlays are the sum of cash disbursements for direct charges for goods and services, the amount of indirect expense charged, the value of third party in-kind contributions applied and the amount of cash advances and payments made to subrecipients. For reports prepared on an accrual basis, outlays are the sum of cash disbursements for direct charges for goods and services, the amount of indirect expense incurred, the value of in-kind contributions applied, and the net increase (or decrease) in the amounts owed by the recipient for goods and other property received, for services performed by employees, contractors, subrecipients and other payees and other amounts becoming owed under programs for which no current services or performance are required.

(v) *Personal property* means property of any kind except real property. It may be tangible, having physical existence, or intangible, having no physical existence, such as copyrights, patents, or securities.

(w) *Prior approval* means written approval by an authorized official evidencing prior consent.

(x) *Program income* means gross income earned by the recipient that is directly generated by a supported activity or earned as a result of the award (see exclusions in §215.24(e) and (h)). Program income includes, but is not limited to, income from fees for services performed, the use or rental of real or personal property acquired under federally-funded projects, the sale of commodities or items fabricated under an award, license fees and royalties on patents and copyrights, and interest on loans made with award funds. Interest earned on advances of Federal funds is not program income. Except as otherwise provided in Federal awarding agency regulations or the terms and conditions of the award, program income does not include the receipt of principal on loans, rebates, credits, discounts, etc., or interest earned on any of them.

(y) *Project costs* means all allowable costs, as set forth in the applicable Federal cost principles, incurred by a recipient and the value of the contributions made by third parties in accomplishing the objectives of the award during the project period.

(z) *Project period* means the period established in the award document during which Federal sponsorship begins and ends.

(aa) *Property* means, unless otherwise stated, real property, equipment, intangible property and debt instruments.

(bb) *Real property* means land, including land improvements, structures and appurtenances thereto, but excludes movable machinery and equipment.

(cc) *Recipient* means an organization receiving financial assistance directly from Federal awarding agencies to carry out a project or program. The term includes public and private institutions of higher education, public and private hospitals, and other quasi-public and private non-profit organizations such as, but not limited to, community action agencies, research institutes, educational associations, and health centers. The term may include commercial organizations, foreign or international organizations (such as agencies of the United Nations) which are recipients, subrecipients, or contractors or subcontractors of recipients or subrecipients at the discretion of the Federal awarding agency. The term does not include government-owned contractor-operated facilities or research centers providing continued support for mission-oriented, large-scale programs that are government-owned or controlled, or are designated as federally-funded research and development centers.

(dd) *Research and development* means all research activities, both basic and applied, and all development activities that are supported at universities, colleges, and other non-profit institutions. “Research” is defined as a systematic study directed toward fuller scientific knowledge or understanding of the subject studied. “Development” is the systematic use of knowledge and understanding gained from research directed toward the production of useful materials, devices, systems, or methods, including design and development of prototypes and processes. The term research also includes activities involving the training of individuals in research techniques where such activities utilize the same facilities as other research and development activities and where such activities are not included in the instruction function.

(ee) *Small awards* means a grant or cooperative agreement not exceeding the small purchase threshold fixed at 41 U.S.C. 403(11) (currently \$25,000).

(ff) *Subaward* means an award of financial assistance in the form of money, or property in lieu of money, made under an award by a recipient to an eligible subrecipient or by a subrecipient to a lower tier subrecipient. The term includes financial assistance when provided by any legal agreement, even if the agreement is called a contract, but does not include procurement of goods and services nor does it include any form of assistance which is excluded from the definition of “award” in §215.2(e).

(gg) *Subrecipient* means the legal entity to which a subaward is made and which is accountable to the recipient for the use of the funds provided. The term may include foreign or international organizations (such as agencies of the United Nations) at the discretion of the Federal awarding agency.

(hh) *Supplies* means all personal property excluding equipment, intangible property, and debt instruments as defined in this section, and inventions of a contractor conceived or first actually reduced to practice in the performance of work under a funding agreement (“subject inventions”), as defined in 37 CFR part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts, and Cooperative Agreements.”

(ii) *Suspension* means an action by a Federal awarding agency that temporarily withdraws Federal sponsorship under an award, pending corrective action by the recipient or pending a decision to terminate the award by the Federal awarding agency. Suspension of an award is a separate action from suspension under Federal agency regulations implementing E.O. 12549 (51 FR 6370, 3 CFR, 1986 Comp., p. 189) and E.O. 12689 (54 FR 34131, 3 CFR, 1989 Comp., p. 235), “Debarment and Suspension.”

(jj) *Termination* means the cancellation of Federal sponsorship, in whole or in part, under an agreement at any time prior to the date of completion.

(kk) *Third party in-kind contributions* means the value of non-cash contributions provided by non-Federal third parties. Third party in-kind contributions may be in the form of real property, equipment, supplies and other expendable property, and the value of goods and services directly benefiting and specifically identifiable to the project or program.

(ll) *Unliquidated obligations*, for financial reports prepared on a cash basis, means the amount of obligations incurred by the recipient that have not been paid. For reports prepared on an accrued expenditure basis, they represent the amount of obligations incurred by the recipient for which an outlay has not been recorded.

(mm) *Unobligated balance* means the portion of the funds authorized by the Federal awarding agency that has not been obligated by the recipient and is determined by deducting the cumulative obligations from the cumulative funds authorized.

(nn) *Unrecovered indirect cost* means the difference between the amount awarded and the amount which could have been awarded under the recipient's approved negotiated indirect cost rate.

(oo) *Working capital advance* means a procedure whereby funds are advanced to the recipient to cover its estimated disbursement needs for a given initial period.

§ 215.3 Effect on other issuances.

For awards subject to this part, all administrative requirements of codified program regulations, program manuals, handbooks and other nonregulatory materials which are inconsistent with the requirements of this part shall be superseded, except to the extent they are required by statute, or authorized in accordance with the deviations provision in §215.4.

§ 215.4 Deviations.

The Office of Management and Budget (OMB) may grant exceptions for classes of grants or recipients subject to the requirements of this part when exceptions are not prohibited by statute. However, in the interest of maximum uniformity, exceptions from the requirements of this part shall be permitted only in unusual circumstances. Federal

awarding agencies may apply more restrictive requirements to a class of recipients when approved by OMB. Federal awarding agencies may apply less restrictive requirements when awarding small awards, except for those requirements which are statutory. Exceptions on a case-by-case basis may also be made by Federal awarding agencies.

§ 215.5 Subawards.

Unless sections of this part specifically exclude subrecipients from coverage, the provisions of this part shall be applied to subrecipients performing work under awards if such subrecipients are institutions of higher education, hospitals or other non-profit organizations. State and local government subrecipients are subject to the provisions of regulations implementing the grants management common rule, “Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments,” published at 7 CFR parts 3015 and 3016, 10 CFR part 600, 13 CFR part 143, 15 CFR part 24, 20 CFR part 437, 22 CFR part 135, 24 CFR parts 44, 85, 111, 511, 570, 571, 575, 590, 850, 882, 905, 941, 968, 970, and 990, 28 CFR part 66, 29 CFR parts 97 and 1470, 32 CFR part 278, 34 CFR parts 74 and 80, 36 CFR part 1207, 38 CFR part 43, 40 CFR parts 30, 31, and 33, 43 CFR part 12, 44 CFR part 13, 45 CFR parts 74, 92, 602, 1157, 1174, 1183, 1234, and 2015, and 49 CFR part 18.

[69 FR 26281, May 11, 2004, as amended at 70 FR 51880, Aug. 31, 2005]

Subpart B—Pre-Award Requirements

§ 215.10 Purpose.

Sections 215.11 through 215.17 prescribe forms and instructions and other pre-award matters to be used in applying for Federal awards.

§ 215.11 Pre-award policies.

(a) Use of Grants and Cooperative Agreements, and Contracts. In each instance, the Federal awarding agency shall decide on the appropriate award instrument (*i.e.*, grant, cooperative agreement, or contract). The Federal Grant and Cooperative Agreement Act (31 U.S.C. 6301–08) governs the use of grants, cooperative agreements and contracts. A grant or cooperative agreement shall be used only when the principal purpose of a transaction is to accomplish a public purpose of support or stimulation authorized by Federal statute. The statutory criterion for choosing between grants and cooperative agreements is that for the latter, “substantial involvement is expected between the executive agency and the State, local government, or other recipient when carrying out the activity contemplated in the agreement.” Contracts shall be used when the principal purpose is acquisition of property or services for the direct benefit or use of the Federal Government.

(b) Public Notice and Priority Setting. Federal awarding agencies shall notify the public of its intended funding priorities for discretionary grant programs, unless funding priorities are established by Federal statute.

§ 215.12 Forms for applying for Federal assistance.

(a) Federal awarding agencies shall comply with the applicable report clearance requirements of 5 CFR part 1320, “Controlling Paperwork Burdens on the Public,” with regard to all forms used by the Federal awarding agency in place of or as a supplement to the Standard Form 424 (SF-424) series.

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

(c) For Federal programs covered by E.O. 12372, “Intergovernmental Review of Federal Programs,” (47 FR 30959, 3 CFR, 1982 Comp., p. 197) the applicant shall complete the appropriate sections of the SF-424 (Application for Federal Assistance) indicating whether the application was subject to review by the State Single Point of Contact (SPOC). The name and address of the SPOC for a particular State can be obtained from the Federal awarding agency or the *Catalog of Federal Domestic Assistance*. The SPOC shall advise the applicant whether the program for which application is made has been selected by that State for review.

(d) Federal awarding agencies that do not use the SF-424 form should indicate whether the application is subject to review by the State under E.O. 12372.

§ 215.13 Debarment and suspension.

Federal awarding agencies and recipients shall comply with Federal agency regulations implementing E.O.s 12549 and 12689, “Debarment and Suspension.” Under those regulations, certain parties who are debarred, suspended or otherwise excluded may not be participants or principals in Federal assistance awards and subawards, and in certain contracts under those awards and subawards.

[70 FR 51879, Aug. 31, 2005]

§ 215.14 Special award conditions.

If an applicant or recipient: has a history of poor performance, is not financially stable, has a management system that does not meet the standards prescribed in this part, has not conformed to the terms and conditions of a previous award, or is not otherwise responsible, Federal awarding agencies may impose additional requirements as needed, provided that such applicant or recipient is notified in writing as to: the nature of the additional requirements, the reason why the additional requirements are being imposed, the nature of the corrective action needed, the time allowed for completing the corrective actions, and the method for requesting reconsideration of the additional requirements

imposed. Any special conditions shall be promptly removed once the conditions that prompted them have been corrected.

§ 215.15 Metric system of measurement.

The Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act (15 U.S.C. 205) declares that the metric system is the preferred measurement system for U.S. trade and commerce. The Act requires each Federal agency to establish a date or dates in consultation with the Secretary of Commerce, when the metric system of measurement will be used in the agency's procurements, grants, and other business-related activities. Metric implementation may take longer where the use of the system is initially impractical or likely to cause significant inefficiencies in the accomplishment of federally-funded activities. Federal awarding agencies shall follow the provisions of E.O. 12770, "Metric Usage in Federal Government Programs" (56 FR 35801, 3 CFR, 1991 Comp., p. 343).

§ 215.16 Resource Conservation and Recovery Act.

Under the Act, any State agency or agency of a political subdivision of a State which is using appropriated Federal funds must comply with section 6002. Section 6002 requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by the Environmental Protection Agency (EPA) (40 CFR parts 247–254). Accordingly, State and local institutions of higher education, hospitals, and non-profit organizations that receive direct Federal awards or other Federal funds shall give preference in their procurement programs funded with Federal funds to the purchase of recycled products pursuant to the EPA guidelines.

§ 215.17 Certifications and representations.

Unless prohibited by statute or codified regulation, each Federal awarding agency is authorized and encouraged to allow recipients to submit certifications and representations required by statute, executive order, or regulation on an annual basis, if the recipients have ongoing and continuing relationships with the agency. Annual certifications and representations shall be signed by responsible officials with the authority to ensure recipients' compliance with the pertinent requirements.

Subpart C—Post Award Requirements

Financial and Program Management

§ 215.20 Purpose of financial and program management.

Sections 215.21 through 215.28 prescribe standards for financial management systems, methods for making payments and rules for: satisfying cost sharing and matching

requirements, accounting for program income, budget revision approvals, making audits, determining allowability of cost, and establishing fund availability.

§ 215.21 Standards for financial management systems.

(a) Federal awarding agencies shall require recipients to relate financial data to performance data and develop unit cost information whenever practical.

(b) Recipients' financial management systems shall provide for the following.

(1) Accurate, current and complete disclosure of the financial results of each federally-sponsored project or program in accordance with the reporting requirements set forth in §215.52. If a Federal awarding agency requires reporting on an accrual basis from a recipient that maintains its records on other than an accrual basis, the recipient shall not be required to establish an accrual accounting system. These recipients may develop such accrual data for its reports on the basis of an analysis of the documentation on hand.

(2) Records that identify adequately the source and application of funds for federally-sponsored activities. These records shall contain information pertaining to Federal awards, authorizations, obligations, unobligated balances, assets, outlays, income and interest.

(3) Effective control over and accountability for all funds, property and other assets. Recipients shall adequately safeguard all such assets and assure they are used solely for authorized purposes.

(4) Comparison of outlays with budget amounts for each award. Whenever appropriate, financial information should be related to performance and unit cost data.

(5) Written procedures to minimize the time elapsing between the transfer of funds to the recipient from the U.S. Treasury and the issuance or redemption of checks, warrants or payments by other means for program purposes by the recipient. To the extent that the provisions of the Cash Management Improvement Act (CMIA) (Pub. L. 101-453) govern, payment methods of State agencies, instrumentalities, and fiscal agents shall be consistent with CMIA Treasury-State Agreements or the CMIA default procedures codified at 31 CFR part 205, "Withdrawal of Cash from the Treasury for Advances under Federal Grant and Other Programs."

(6) Written procedures for determining the reasonableness, allocability and allowability of costs in accordance with the provisions of the applicable Federal cost principles and the terms and conditions of the award.

(7) Accounting records including cost accounting records that are supported by source documentation.

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

(d) The Federal awarding agency may require adequate fidelity bond coverage where the recipient lacks sufficient coverage to protect the Federal Government's interest.

(e) Where bonds are required in the situations described above, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties, as prescribed in 31 CFR part 223, "Surety Companies Doing Business with the United States."

§ 215.22 Payment.

(a) Payment methods shall minimize the time elapsing between the transfer of funds from the United States Treasury and the issuance or redemption of checks, warrants, or payment by other means by the recipients. Payment methods of State agencies or instrumentalities shall be consistent with Treasury-State CMIA agreements or default procedures codified at 31 CFR part 205.

(b) Recipients are to be paid in advance, provided they maintain or demonstrate the willingness to maintain:

(1) Written procedures that minimize the time elapsing between the transfer of funds and disbursement by the recipient, and

(2) Financial management systems that meet the standards for fund control and accountability as established in §215.21. Cash advances to a recipient organization shall be limited to the minimum amounts needed and be timed to be in accordance with the actual, immediate cash requirements of the recipient organization in carrying out the purpose of the approved program or project. The timing and amount of cash advances shall be as close as is administratively feasible to the actual disbursements by the recipient organization for direct program or project costs and the proportionate share of any allowable indirect costs.

(c) Whenever possible, advances shall be consolidated to cover anticipated cash needs for all awards made by the Federal awarding agency to the recipient.

(1) Advance payment mechanisms include, but are not limited to, Treasury check and electronic funds transfer.

(2) Advance payment mechanisms are subject to 31 CFR part 205.

(3) Recipients shall be authorized to submit requests for advances and reimbursements at least monthly when electronic fund transfers are not used.

(d) Requests for Treasury check advance payment shall be submitted on SF-270, "Request for Advance or Reimbursement," or other forms as may be authorized by OMB. This form is not to be used when Treasury check advance payments are made to the recipient automatically through the use of a predetermined payment schedule or if precluded by special Federal awarding agency instructions for electronic funds transfer.

(e) Reimbursement is the preferred method when the requirements in §215.12(b) cannot be met. Federal awarding agencies may also use this method on any construction agreement, or if the major portion of the construction project is accomplished through private market financing or Federal loans, and the Federal assistance constitutes a minor portion of the project.

(1) When the reimbursement method is used, the Federal awarding agency shall make payment within 30 days after receipt of the billing, unless the billing is improper.

(2) Recipients shall be authorized to submit request for reimbursement at least monthly when electronic funds transfers are not used.

(f) If a recipient cannot meet the criteria for advance payments and the Federal awarding agency has determined that reimbursement is not feasible because the recipient lacks sufficient working capital, the Federal awarding agency may provide cash on a working capital advance basis. Under this procedure, the Federal awarding agency shall advance cash to the recipient to cover its estimated disbursement needs for an initial period generally geared to the awardee's disbursing cycle. Thereafter, the Federal awarding agency shall reimburse the recipient for its actual cash disbursements. The working capital advance method of payment shall not be used for recipients unwilling or unable to provide timely advances to their subrecipient to meet the subrecipient's actual cash disbursements.

(g) To the extent available, recipients shall disburse funds available from repayments to and interest earned on a revolving fund, program income, rebates, refunds, contract settlements, audit recoveries and interest earned on such funds before requesting additional cash payments.

(h) Unless otherwise required by statute, Federal awarding agencies shall not withhold payments for proper charges made by recipients at any time during the project period unless paragraphs (h)(1) or (2) of this section apply.

(1) A recipient has failed to comply with the project objectives, the terms and conditions of the award, or Federal reporting requirements.

(2) The recipient or subrecipient is delinquent in a debt to the United States as defined in OMB Circular A-129, "Managing Federal Credit Programs." Under such conditions, the Federal awarding agency may, upon reasonable notice, inform the recipient that payments shall not be made for obligations incurred after a specified date until the conditions are corrected or the indebtedness to the Federal Government is liquidated.

(i) Standards governing the use of banks and other institutions as depositories of funds advanced under awards are as follows.

(1) Except for situations described in paragraph (i)(2) of this section, Federal awarding agencies shall not require separate depository accounts for funds provided to a recipient or establish any eligibility requirements for depositories for funds provided to a recipient. However, recipients must be able to account for the receipt, obligation and expenditure of funds.

(2) Advances of Federal funds shall be deposited and maintained in insured accounts whenever possible.

(j) Consistent with the national goal of expanding the opportunities for women-owned and minority-owned business enterprises, recipients shall be encouraged to use women-owned and minority-owned banks (a bank which is owned at least 50 percent by women or minority group members).

(k) Recipients shall maintain advances of Federal funds in interest bearing accounts, unless paragraphs (k)(1), (2) or (3) of this section apply.

(1) The recipient receives less than \$120,000 in Federal awards per year.

(2) The best reasonably available interest bearing account would not be expected to earn interest in excess of \$250 per year on Federal cash balances.

(3) The depository would require an average or minimum balance so high that it would not be feasible within the expected Federal and non-Federal cash resources.

(l) For those entities where CMIA and its implementing regulations at 31 CFR part 205 do not apply, interest earned on Federal advances deposited in interest bearing accounts shall be remitted annually to Department of Health and Human Services, Payment Management System, Rockville, MD 20852. Interest amounts up to \$250 per year may be retained by the recipient for administrative expense. State universities and hospitals shall comply with CMIA, as it pertains to interest. If an entity subject to CMIA uses its own funds to pay pre-award costs for discretionary awards without prior written approval from the Federal awarding agency, it waives its right to recover the interest under CMIA.

(m) Except as noted elsewhere in this part, only the following forms shall be authorized for the recipients in requesting advances and reimbursements. Federal agencies shall not require more than an original and two copies of these forms.

(1) SF-270, Request for Advance or Reimbursement. Each Federal awarding agency shall adopt the SF-270 as a standard form for all nonconstruction programs when electronic funds transfer or predetermined advance methods are not used. Federal awarding agencies, however, have the option of using this form for construction

programs in lieu of the SF-271, “Outlay Report and Request for Reimbursement for Construction Programs.”

(2) SF-271, Outlay Report and Request for Reimbursement for Construction Programs. Each Federal awarding agency shall adopt the SF-271 as the standard form to be used for requesting reimbursement for construction programs. However, a Federal awarding agency may substitute the SF-270 when the Federal awarding agency determines that it provides adequate information to meet Federal needs.

§ 215.23 Cost sharing or matching.

(a) All contributions, including cash and third party in-kind, shall be accepted as part of the recipient's cost sharing or matching when such contributions meet all of the following criteria.

- (1) Are verifiable from the recipient's records.
- (2) Are not included as contributions for any other federally-assisted project or program.
- (3) Are necessary and reasonable for proper and efficient accomplishment of project or program objectives.
- (4) Are allowable under the applicable cost principles.
- (5) Are not paid by the Federal Government under another award, except where authorized by Federal statute to be used for cost sharing or matching.
- (6) Are provided for in the approved budget when required by the Federal awarding agency.
- (7) Conform to other provisions of this part, as applicable.

(b) Unrecovered indirect costs may be included as part of cost sharing or matching only with the prior approval of the Federal awarding agency.

(c) Values for recipient contributions of services and property shall be established in accordance with the applicable cost principles. If a Federal awarding agency authorizes recipients to donate buildings or land for construction/facilities acquisition projects or long-term use, the value of the donated property for cost sharing or matching shall be the lesser of paragraphs (c)(1) or (2) of this section.

(1) The certified value of the remaining life of the property recorded in the recipient's accounting records at the time of donation.

(2) The current fair market value. However, when there is sufficient justification, the Federal awarding agency may approve the use of the current fair market value of the

donated property, even if it exceeds the certified value at the time of donation to the project.

(d) Volunteer services furnished by professional and technical personnel, consultants, and other skilled and unskilled labor may be counted as cost sharing or matching if the service is an integral and necessary part of an approved project or program. Rates for volunteer services shall be consistent with those paid for similar work in the recipient's organization. In those instances in which the required skills are not found in the recipient organization, rates shall be consistent with those paid for similar work in the labor market in which the recipient competes for the kind of services involved. In either case, paid fringe benefits that are reasonable, allowable, and allocable may be included in the valuation.

(e) When an employer other than the recipient furnishes the services of an employee, these services shall be valued at the employee's regular rate of pay (plus an amount of fringe benefits that are reasonable, allowable, and allocable, but exclusive of overhead costs), provided these services are in the same skill for which the employee is normally paid.

(f) Donated supplies may include such items as expendable equipment, office supplies, laboratory supplies or workshop and classroom supplies. Value assessed to donated supplies included in the cost sharing or matching share shall be reasonable and shall not exceed the fair market value of the property at the time of the donation.

(g) The method used for determining cost sharing or matching for donated equipment, buildings and land for which title passes to the recipient may differ according to the purpose of the award, if paragraphs (g)(1) or (2) of this section apply.

(1) If the purpose of the award is to assist the recipient in the acquisition of equipment, buildings or land, the total value of the donated property may be claimed as cost sharing or matching.

(2) If the purpose of the award is to support activities that require the use of equipment, buildings or land, normally only depreciation or use charges for equipment and buildings may be made. However, the full value of equipment or other capital assets and fair rental charges for land may be allowed, provided that the Federal awarding agency has approved the charges.

(h) The value of donated property shall be determined in accordance with the usual accounting policies of the recipient, with the following qualifications.

(1) The value of donated land and buildings shall not exceed its fair market value at the time of donation to the recipient as established by an independent appraiser (*e.g.*, certified real property appraiser or General Services Administration representative) and certified by a responsible official of the recipient.

(2) The value of donated equipment shall not exceed the fair market value of equipment of the same age and condition at the time of donation.

(3) The value of donated space shall not exceed the fair rental value of comparable space as established by an independent appraisal of comparable space and facilities in a privately-owned building in the same locality.

(4) The value of loaned equipment shall not exceed its fair rental value.

(5) The following requirements pertain to the recipient's supporting records for in-kind contributions from third parties.

(i) Volunteer services shall be documented and, to the extent feasible, supported by the same methods used by the recipient for its own employees.

(ii) The basis for determining the valuation for personal service, material, equipment, buildings and land shall be documented.

§ 215.24 Program income.

(a) Federal awarding agencies shall apply the standards set forth in this section in requiring recipient organizations to account for program income related to projects financed in whole or in part with Federal funds.

(b) Except as provided in paragraph (h) of this section, program income earned during the project period shall be retained by the recipient and, in accordance with Federal awarding agency regulations or the terms and conditions of the award, shall be used in one or more of the ways listed in the following.

(1) Added to funds committed to the project by the Federal awarding agency and recipient and used to further eligible project or program objectives.

(2) Used to finance the non-Federal share of the project or program.

(3) Deducted from the total project or program allowable cost in determining the net allowable costs on which the Federal share of costs is based.

(c) When an agency authorizes the disposition of program income as described in paragraphs (b)(1) or (b)(2) of this section, program income in excess of any limits stipulated shall be used in accordance with paragraph (b)(3) of this section.

(d) In the event that the Federal awarding agency does not specify in its regulations or the terms and conditions of the award how program income is to be used, paragraph (b)(3) of this section shall apply automatically to all projects or programs except research. For awards that support research, paragraph (b)(1) of this section shall apply automatically

unless the awarding agency indicates in the terms and conditions another alternative on the award or the recipient is subject to special award conditions, as indicated in §215.14.

(e) Unless Federal awarding agency regulations or the terms and conditions of the award provide otherwise, recipients shall have no obligation to the Federal Government regarding program income earned after the end of the project period.

(f) If authorized by Federal awarding agency regulations or the terms and conditions of the award, costs incident to the generation of program income may be deducted from gross income to determine program income, provided these costs have not been charged to the award.

(g) Proceeds from the sale of property shall be handled in accordance with the requirements of the Property Standards (see §215.30 through §215.37).

(h) Unless Federal awarding agency regulations or the terms and condition of the award provide otherwise, recipients shall have no obligation to the Federal Government with respect to program income earned from license fees and royalties for copyrighted material, patents, patent applications, trademarks, and inventions produced under an award. However, Patent and Trademark Amendments (35 U.S.C. 18) apply to inventions made under an experimental, developmental, or research award.

§ 215.25 Revision of budget and program plans.

(a) The budget plan is the financial expression of the project or program as approved during the award process. It may include either the Federal and non-Federal share, or only the Federal share, depending upon Federal awarding agency requirements. It shall be related to performance for program evaluation purposes whenever appropriate.

(b) Recipients are required to report deviations from budget and program plans, and request prior approvals for budget and program plan revisions, in accordance with this section.

(c) For nonconstruction awards, recipients shall request prior approvals from Federal awarding agencies for one or more of the following program or budget related reasons.

(1) Change in the scope or the objective of the project or program (even if there is no associated budget revision requiring prior written approval).

(2) Change in a key person specified in the application or award document.

(3) The absence for more than three months, or a 25 percent reduction in time devoted to the project, by the approved project director or principal investigator.

(4) The need for additional Federal funding.

(5) The transfer of amounts budgeted for indirect costs to absorb increases in direct costs, or vice versa, if approval is required by the Federal awarding agency.

(6) The inclusion, unless waived by the Federal awarding agency, of costs that require prior approval in accordance with any of the following, as applicable:

(i) 2 CFR part 220, “Cost Principles for Educational Institutions (OMB Circular A–21);”

(ii) 2 CFR part 230, “Cost Principles for Non-Profit Organizations (OMB Circular A–122);”

(iii) 45 CFR part 74, Appendix E, “Principles for Determining Costs Applicable to Research and Development under Grants and Contracts with Hospitals;” and

(iv) 48 CFR part 31, “Contract Cost Principles and Procedures.”

(7) The transfer of funds allotted for training allowances (direct payment to trainees) to other categories of expense.

(8) Unless described in the application and funded in the approved awards, the subaward, transfer or contracting out of any work under an award. This provision does not apply to the purchase of supplies, material, equipment or general support services.

(d) No other prior approval requirements for specific items may be imposed unless a deviation has been approved by OMB.

(e) Except for requirements listed in paragraphs (c)(1) and (c)(4) of this section, Federal awarding agencies are authorized, at their option, to waive cost-related and administrative prior written approvals required by 2 CFR parts 220 and 230 (OMB Circulars A–21 and A–122). Such waivers may include authorizing recipients to do any one or more of the following.

(1) Incur pre-award costs 90 calendar days prior to award or more than 90 calendar days with the prior approval of the Federal awarding agency. All pre-award costs are incurred at the recipient's risk (*i.e.*, the Federal awarding agency is under no obligation to reimburse such costs if for any reason the recipient does not receive an award or if the award is less than anticipated and inadequate to cover such costs).

(2) Initiate a one-time extension of the expiration date of the award of up to 12 months unless one or more of the following conditions apply. For one-time extensions, the recipient must notify the Federal awarding agency in writing with the supporting reasons and revised expiration date at least 10 days before the expiration date specified in the award. This one-time extension may not be exercised merely for the purpose of using unobligated balances.

(i) The terms and conditions of award prohibit the extension.

(ii) The extension requires additional Federal funds.

(iii) The extension involves any change in the approved objectives or scope of the project.

(3) Carry forward unobligated balances to subsequent funding periods.

(4) For awards that support research, unless the Federal awarding agency provides otherwise in the award or in the agency's regulations, the prior approval requirements described in this paragraph (e) are automatically waived (*i.e.*, recipients need not obtain such prior approvals) unless one of the conditions included in paragraph (e)(2) applies.

(f) The Federal awarding agency may, at its option, restrict the transfer of funds among direct cost categories or programs, functions and activities for awards in which the Federal share of the project exceeds \$100,000 and the cumulative amount of such transfers exceeds or is expected to exceed 10 percent of the total budget as last approved by the Federal awarding agency. No Federal awarding agency shall permit a transfer that would cause any Federal appropriation or part thereof to be used for purposes other than those consistent with the original intent of the appropriation.

(g) All other changes to nonconstruction budgets, except for the changes described in paragraph (j) of this section, do not require prior approval.

(h) For construction awards, recipients shall request prior written approval promptly from Federal awarding agencies for budget revisions whenever paragraphs (h)(1), (2) or (3) of this section apply.

(1) The revision results from changes in the scope or the objective of the project or program.

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

(3) A revision is desired which involves specific costs for which prior written approval requirements may be imposed consistent with applicable OMB cost principles listed in §215.27.

(i) No other prior approval requirements for specific items may be imposed unless a deviation has been approved by OMB.

(j) When a Federal awarding agency makes an award that provides support for both construction and nonconstruction work, the Federal awarding agency may require the recipient to request prior approval from the Federal awarding agency before making any fund or budget transfers between the two types of work supported.

(k) For both construction and nonconstruction awards, Federal awarding agencies shall require recipients to notify the Federal awarding agency in writing promptly whenever

the amount of Federal authorized funds is expected to exceed the needs of the recipient for the project period by more than \$5000 or five percent of the Federal award, whichever is greater. This notification shall not be required if an application for additional funding is submitted for a continuation award.

(l) When requesting approval for budget revisions, recipients shall use the budget forms that were used in the application unless the Federal awarding agency indicates a letter of request suffices.

(m) Within 30 calendar days from the date of receipt of the request for budget revisions, Federal awarding agencies shall review the request and notify the recipient whether the budget revisions have been approved. If the revision is still under consideration at the end of 30 calendar days, the Federal awarding agency shall inform the recipient in writing of the date when the recipient may expect the decision.

[69 FR 26281, May 11, 2004, as amended at 70 FR 51880, Aug. 31, 2005]

§ 215.26 Non-Federal audits.

(a) Recipients and subrecipients that are institutions of higher education or other non-profit organizations (including hospitals) shall be subject to the audit requirements contained in the Single Audit Act Amendments of 1996 (31 U.S.C. 7501–7507) and revised OMB Circular A–133, “Audits of States, Local Governments, and Non-Profit Organizations.”

(b) State and local governments shall be subject to the audit requirements contained in the Single Audit Act Amendments of 1996 (31 U.S.C. 7501–7507) and revised OMB Circular A–133, “Audits of States, Local Governments, and Non-Profit Organizations.”

(c) For-profit hospitals not covered by the audit provisions of revised OMB Circular A–133 shall be subject to the audit requirements of the Federal awarding agencies.

(d) Commercial organizations shall be subject to the audit requirements of the Federal awarding agency or the prime recipient as incorporated into the award document.

§ 215.27 Allowable costs.

For each kind of recipient, there is a set of Federal principles for determining allowable costs. Allowability of costs shall be determined in accordance with the cost principles applicable to the entity incurring the costs. Thus, allowability of costs incurred by State, local or federally-recognized Indian tribal governments is determined in accordance with the provisions of 2 CFR part 225, “Cost Principles for State, Local, and Indian Tribal Governments (OMB Circular A–87.” The allowability of costs incurred by non-profit organizations is determined in accordance with the provisions of 2 CFR part 230, “Cost Principles for Non-Profit Organizations (OMB Circular A–122).” The allowability of costs incurred by institutions of higher education is determined in accordance with the

provisions of 2 CFR part 220, “Cost Principles for Educational Institutions (OMB Circular A–21).” The allowability of costs incurred by hospitals is determined in accordance with the provisions of Appendix E of 45 CFR part 74, “Principles for Determining Costs Applicable to Research and Development Under Grants and Contracts with Hospitals.” The allowability of costs incurred by commercial organizations and those non-profit organizations listed in Attachment C to Circular A–122 is determined in accordance with the provisions of the Federal Acquisition Regulation (FAR) at 48 CFR part 31.

[70 FR 51880, Aug. 31, 2005]

§ 215.28 Period of availability of funds.

Where a funding period is specified, a recipient may charge to the grant only allowable costs resulting from obligations incurred during the funding period and any pre-award costs authorized by the Federal awarding agency.

§ 215.29 Conditional exemptions.

(a) OMB authorizes conditional exemption from OMB administrative requirements and cost principles circulars for certain Federal programs with statutorily-authorized consolidated planning and consolidated administrative funding, that are identified by a Federal agency and approved by the head of the Executive department or establishment. A Federal agency shall consult with OMB during its consideration of whether to grant such an exemption.

(b) To promote efficiency in State and local program administration, when Federal non-entitlement programs with common purposes have specific statutorily-authorized consolidated planning and consolidated administrative funding and where most of the State agency's resources come from non-Federal sources, Federal agencies may exempt these covered State-administered, non-entitlement grant programs from certain OMB grants management requirements. The exemptions would be from:

(1) The requirements in 2 CFR part 225, “Cost Principles for State, Local, and Indian Tribal Governments (OMB Circular A–87)” other than the allocability of costs provisions that are contained in subsection C.3 of Appendix A to that part;

(2) The requirements in 2 CFR part 220, “Cost Principles for Educational Institutions (OMB Circular A–21)” other than the allocability of costs provisions that are contained in paragraph C.4 in section C of the Appendix to that part;

(3) The requirements in 2 CFR part 230, “Cost Principles for Non-Profit Organizations (OMB Circular A–122)” other than the allocability of costs provisions that are in paragraph A.4 in section A of Appendix A to that part;

(4) The administrative requirements provisions of part 215 (OMB Circular A-110, “Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations,”); and

(5) The agencies' grants management common rule (see §215.5).

(c) When a Federal agency provides this flexibility, as a prerequisite to a State's exercising this option, a State must adopt its own written fiscal and administrative requirements for expending and accounting for all funds, which are consistent with the provisions of 2 CFR part 225, “Cost Principles for State, Local, and Indian Tribal Governments (OMB Circular A-87)” and extend such policies to all subrecipients. These fiscal and administrative requirements must be sufficiently specific to ensure that: funds are used in compliance with all applicable Federal statutory and regulatory provisions, costs are reasonable and necessary for operating these programs, and funds are not be used for general expenses required to carry out other responsibilities of a State or its subrecipients.

[69 FR 26281, May 11, 2004, as amended at 70 FR 51881, Aug. 31, 2005]

Property Standards

§ 215.30 Purpose of property standards.

Sections 215.31 through 215.37 set forth uniform standards governing management and disposition of property furnished by the Federal Government whose cost was charged to a project supported by a Federal award. Federal awarding agencies shall require recipients to observe these standards under awards and shall not impose additional requirements, unless specifically required by Federal statute. The recipient may use its own property management standards and procedures provided it observes the provisions of §215.31 through §215.37.

§ 215.31 Insurance coverage.

Recipients shall, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired with Federal funds as provided to property owned by the recipient. Federally-owned property need not be insured unless required by the terms and conditions of the award.

§ 215.32 Real property.

Each Federal awarding agency shall prescribe requirements for recipients concerning the use and disposition of real property acquired in whole or in part under awards. Unless otherwise provided by statute, such requirements, at a minimum, shall contain the following.

(a) Title to real property shall vest in the recipient subject to the condition that the recipient shall use the real property for the authorized purpose of the project as long as it is needed and shall not encumber the property without approval of the Federal awarding agency.

(b) The recipient shall obtain written approval by the Federal awarding agency for the use of real property in other federally-sponsored projects when the recipient determines that the property is no longer needed for the purpose of the original project. Use in other projects shall be limited to those under federally-sponsored projects (*i.e.*, awards) or programs that have purposes consistent with those authorized for support by the Federal awarding agency.

(c) When the real property is no longer needed as provided in paragraphs (a) and (b) of this section, the recipient shall request disposition instructions from the Federal awarding agency or its successor Federal awarding agency. The Federal awarding agency shall observe one or more of the following disposition instructions.

(1) The recipient may be permitted to retain title without further obligation to the Federal Government after it compensates the Federal Government for that percentage of the current fair market value of the property attributable to the Federal participation in the project.

(2) The recipient may be directed to sell the property under guidelines provided by the Federal awarding agency and pay the Federal Government for that percentage of the current fair market value of the property attributable to the Federal participation in the project (after deducting actual and reasonable selling and fix-up expenses, if any, from the sales proceeds). When the recipient is authorized or required to sell the property, proper sales procedures shall be established that provide for competition to the extent practicable and result in the highest possible return.

(3) The recipient may be directed to transfer title to the property to the Federal Government or to an eligible third party provided that, in such cases, the recipient shall be entitled to compensation for its attributable percentage of the current fair market value of the property.

§ 215.33 Federally-owned and exempt property.

(a) *Federally-owned property.* (1) Title to federally-owned property remains vested in the Federal Government. Recipients shall submit annually an inventory listing of federally-owned property in their custody to the Federal awarding agency. Upon completion of the award or when the property is no longer needed, the recipient shall report the property to the Federal awarding agency for further Federal agency utilization.

(2) If the Federal awarding agency has no further need for the property, it shall be declared excess and reported to the General Services Administration, unless the Federal awarding agency has statutory authority to dispose of the property by alternative methods

(e.g., the authority provided by the Federal Technology Transfer Act (15 U.S.C. 3710 (I)) to donate research equipment to educational and non-profit organizations in accordance with E.O. 12821, “Improving Mathematics and Science Education in Support of the National Education Goals” (57 FR 54285, 3 CFR, 1992 Comp., p. 323)). Appropriate instructions shall be issued to the recipient by the Federal awarding agency.

(b) *Exempt property.* When statutory authority exists, the Federal awarding agency has the option to vest title to property acquired with Federal funds in the recipient without further obligation to the Federal Government and under conditions the Federal awarding agency considers appropriate. Such property is “exempt property.” Should a Federal awarding agency not establish conditions, title to exempt property upon acquisition shall vest in the recipient without further obligation to the Federal Government.

§ 215.34 Equipment.

(a) Title to equipment acquired by a recipient with Federal funds shall vest in the recipient, subject to conditions of this section.

(b) The recipient shall not use equipment acquired with Federal funds to provide services to non-Federal outside organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute, for as long as the Federal Government retains an interest in the equipment.

(c) The recipient shall use the equipment in the project or program for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds and shall not encumber the property without approval of the Federal awarding agency. When no longer needed for the original project or program, the recipient shall use the equipment in connection with its other federally-sponsored activities, in the following order of priority:

(1) Activities sponsored by the Federal awarding agency which funded the original project, then

(2) Activities sponsored by other Federal awarding agencies.

(d) During the time that equipment is used on the project or program for which it was acquired, the recipient shall make it available for use on other projects or programs if such other use will not interfere with the work on the project or program for which the equipment was originally acquired. First preference for such other use shall be given to other projects or programs sponsored by the Federal awarding agency that financed the equipment; second preference shall be given to projects or programs sponsored by other Federal awarding agencies. If the equipment is owned by the Federal Government, use on other activities not sponsored by the Federal Government shall be permissible if authorized by the Federal awarding agency. User charges shall be treated as program income.

(e) When acquiring replacement equipment, the recipient may use the equipment to be replaced as trade-in or sell the equipment and use the proceeds to offset the costs of the replacement equipment subject to the approval of the Federal awarding agency.

(f) The recipient's property management standards for equipment acquired with Federal funds and federally-owned equipment shall include all of the following:

(1) Equipment records shall be maintained accurately and shall include the following information.

(i) A description of the equipment.

(ii) Manufacturer's serial number, model number, Federal stock number, national stock number, or other identification number.

(iii) Source of the equipment, including the award number.

(iv) Whether title vests in the recipient or the Federal Government.

(v) Acquisition date (or date received, if the equipment was furnished by the Federal Government) and cost.

(vi) Information from which one can calculate the percentage of Federal participation in the cost of the equipment (not applicable to equipment furnished by the Federal Government).

(vii) Location and condition of the equipment and the date the information was reported.

(viii) Unit acquisition cost.

(ix) Ultimate disposition data, including date of disposal and sales price or the method used to determine current fair market value where a recipient compensates the Federal awarding agency for its share.

(2) Equipment owned by the Federal Government shall be identified to indicate Federal ownership.

(3) A physical inventory of equipment shall be taken and the results reconciled with the equipment records at least once every two years. Any differences between quantities determined by the physical inspection and those shown in the accounting records shall be investigated to determine the causes of the difference. The recipient shall, in connection with the inventory, verify the existence, current utilization, and continued need for the equipment.

(4) A control system shall be in effect to insure adequate safeguards to prevent loss, damage, or theft of the equipment. Any loss, damage, or theft of equipment shall be

investigated and fully documented; if the equipment was owned by the Federal Government, the recipient shall promptly notify the Federal awarding agency.

(5) Adequate maintenance procedures shall be implemented to keep the equipment in good condition.

(6) Where the recipient is authorized or required to sell the equipment, proper sales procedures shall be established which provide for competition to the extent practicable and result in the highest possible return.

(g) When the recipient no longer needs the equipment, the equipment may be used for other activities in accordance with the following standards. For equipment with a current per unit fair market value of \$5000 or more, the recipient may retain the equipment for other uses provided that compensation is made to the original Federal awarding agency or its successor. The amount of compensation shall be computed by applying the percentage of Federal participation in the cost of the original project or program to the current fair market value of the equipment. If the recipient has no need for the equipment, the recipient shall request disposition instructions from the Federal awarding agency. The Federal awarding agency shall determine whether the equipment can be used to meet the agency's requirements. If no requirement exists within that agency, the availability of the equipment shall be reported to the General Services Administration by the Federal awarding agency to determine whether a requirement for the equipment exists in other Federal agencies. The Federal awarding agency shall issue instructions to the recipient no later than 120 calendar days after the recipient's request and the following procedures shall govern.

(1) If so instructed or if disposition instructions are not issued within 120 calendar days after the recipient's request, the recipient shall sell the equipment and reimburse the Federal awarding agency an amount computed by applying to the sales proceeds the percentage of Federal participation in the cost of the original project or program. However, the recipient shall be permitted to deduct and retain from the Federal share \$500 or ten percent of the proceeds, whichever is less, for the recipient's selling and handling expenses.

(2) If the recipient is instructed to ship the equipment elsewhere, the recipient shall be reimbursed by the Federal Government by an amount which is computed by applying the percentage of the recipient's participation in the cost of the original project or program to the current fair market value of the equipment, plus any reasonable shipping or interim storage costs incurred.

(3) If the recipient is instructed to otherwise dispose of the equipment, the recipient shall be reimbursed by the Federal awarding agency for such costs incurred in its disposition.

(4) The Federal awarding agency may reserve the right to transfer the title to the Federal Government or to a third party named by the Federal Government when such third party

is otherwise eligible under existing statutes. Such transfer shall be subject to the following standards.

- (i) The equipment shall be appropriately identified in the award or otherwise made known to the recipient in writing.
- (ii) The Federal awarding agency shall issue disposition instructions within 120 calendar days after receipt of a final inventory. The final inventory shall list all equipment acquired with grant funds and federally-owned equipment. If the Federal awarding agency fails to issue disposition instructions within the 120 calendar day period, the recipient shall apply the standards of this section, as appropriate.
- (iii) When the Federal awarding agency exercises its right to take title, the equipment shall be subject to the provisions for federally-owned equipment.

§ 215.35 Supplies and other expendable property.

- (a) Title to supplies and other expendable property shall vest in the recipient upon acquisition. If there is a residual inventory of unused supplies exceeding \$5000 in total aggregate value upon termination or completion of the project or program and the supplies are not needed for any other federally-sponsored project or program, the recipient shall retain the supplies for use on non-Federal sponsored activities or sell them, but shall, in either case, compensate the Federal Government for its share. The amount of compensation shall be computed in the same manner as for equipment.
- (b) The recipient shall not use supplies acquired with Federal funds to provide services to non-Federal outside organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute as long as the Federal Government retains an interest in the supplies.

§ 215.36 Intangible property.

- (a) The recipient may copyright any work that is subject to copyright and was developed, or for which ownership was purchased, under an award. The Federal awarding agency(ies) reserve a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so.
- (b) Recipients are subject to applicable regulations governing patents and inventions, including government-wide regulations issued by the Department of Commerce at 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements."
- (c) The Federal Government has the right to:
 - (1) Obtain, reproduce, publish or otherwise use the data first produced under an award.

(2) Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.

(d) (1) In addition, in response to a Freedom of Information Act (FOIA) request for research data relating to published research findings produced under an award that was used by the Federal Government in developing an agency action that has the force and effect of law, the Federal awarding agency shall request, and the recipient shall provide, within a reasonable time, the research data so that they can be made available to the public through the procedures established under the FOIA. If the Federal awarding agency obtains the research data solely in response to a FOIA request, the agency may charge the requester a reasonable fee equaling the full incremental cost of obtaining the research data. This fee should reflect costs incurred by the agency, the recipient, and the applicable subrecipients. This fee is in addition to any fees the agency may assess under the FOIA (5 U.S.C. 552(a)(4)(A)).

(2) The following definitions apply for purposes of paragraph (d) of this section:

(i) Research data is defined as the recorded factual material commonly accepted in the scientific community as necessary to validate research findings, but not any of the following: Preliminary analyses, drafts of scientific papers, plans for future research, peer reviews, or communications with colleagues. This “recorded” material excludes physical objects (*e.g.* , laboratory samples). Research data also do not include:

(A) Trade secrets, commercial information, materials necessary to be held confidential by a researcher until they are published, or similar information which is protected under law; and

(B) Personnel and medical information and similar information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, such as information that could be used to identify a particular person in a research study.

(ii) Published is defined as either when:

(A) Research findings are published in a peer-reviewed scientific or technical journal; or

(B) A Federal agency publicly and officially cites the research findings in support of an agency action that has the force and effect of law.

(iii) Used by the Federal Government in developing an agency action that has the force and effect of law is defined as when an agency publicly and officially cites the research findings in support of an agency action that has the force and effect of law.

(e) Title to intangible property and debt instruments acquired under an award or subaward vests upon acquisition in the recipient. The recipient shall use that property for the originally-authorized purpose, and the recipient shall not encumber the property without approval of the Federal awarding agency. When no longer needed for the

originally authorized purpose, disposition of the intangible property shall occur in accordance with the provisions of §215.34(g).

[69 FR 26281, May 11, 2004, as amended at 70 FR 51881, Aug. 31, 2005]

§ 215.37 Property trust relationship.

Real property, equipment, intangible property and debt instruments that are acquired or improved with Federal funds shall be held in trust by the recipient as trustee for the beneficiaries of the project or program under which the property was acquired or improved. Agencies may require recipients to record liens or other appropriate notices of record to indicate that personal or real property has been acquired or improved with Federal funds and that use and disposition conditions apply to the property.

Procurement Standards

§ 215.40 Purpose of procurement standards.

Sections 215.41 through 215.48 set forth standards for use by recipients in establishing procedures for the procurement of supplies and other expendable property, equipment, real property and other services with Federal funds. These standards are furnished to ensure that such materials and services are obtained in an effective manner and in compliance with the provisions of applicable Federal statutes and executive orders. No additional procurement standards or requirements shall be imposed by the Federal awarding agencies upon recipients, unless specifically required by Federal statute or executive order or approved by OMB.

§ 215.41 Recipient responsibilities.

The standards contained in this section do not relieve the recipient of the contractual responsibilities arising under its contract(s). The recipient is the responsible authority, without recourse to the Federal awarding agency, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in support of an award or other agreement. This includes disputes, claims, protests of award, source evaluation or other matters of a contractual nature. Matters concerning violation of statute are to be referred to such Federal, State or local authority as may have proper jurisdiction.

§ 215.42 Codes of conduct.

The recipient shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts. No employee, officer, or agent shall participate in the selection, award, or administration of a contract supported by Federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to

employ any of the parties indicated herein, has a financial or other interest in the firm selected for an award. The officers, employees, and agents of the recipient shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, or parties to subagreements. However, recipients may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct shall provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the recipient.

§ 215.43 Competition.

All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. The recipient shall be alert to organizational conflicts of interest as well as noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations for bids and/or requests for proposals shall be excluded from competing for such procurements. Awards shall be made to the bidder or offeror whose bid or offer is responsive to the solicitation and is most advantageous to the recipient, price, quality and other factors considered. Solicitations shall clearly set forth all requirements that the bidder or offeror shall fulfill in order for the bid or offer to be evaluated by the recipient. Any and all bids or offers may be rejected when it is in the recipient's interest to do so.

§ 215.44 Procurement procedures.

(a) All recipients shall establish written procurement procedures. These procedures shall provide for, at a minimum, that paragraphs (a)(1), (2) and (3) of this section apply.

(1) Recipients avoid purchasing unnecessary items.

(2) Where appropriate, an analysis is made of lease and purchase alternatives to determine which would be the most economical and practical procurement for the Federal Government.

(3) Solicitations for goods and services provide for all of the following.

(i) A clear and accurate description of the technical requirements for the material, product or service to be procured. In competitive procurements, such a description shall not contain features which unduly restrict competition.

(ii) Requirements which the bidder/offeror must fulfill and all other factors to be used in evaluating bids or proposals.

(iii) A description, whenever practicable, of technical requirements in terms of functions to be performed or performance required, including the range of acceptable characteristics or minimum acceptable standards.

(iv) The specific features of “brand name or equal” descriptions that bidders are required to meet when such items are included in the solicitation.

(v) The acceptance, to the extent practicable and economically feasible, of products and services dimensioned in the metric system of measurement.

(vi) Preference, to the extent practicable and economically feasible, for products and services that conserve natural resources and protect the environment and are energy efficient.

(b) Positive efforts shall be made by recipients to utilize small businesses, minority-owned firms, and women's business enterprises, whenever possible. Recipients of Federal awards shall take all of the following steps to further this goal.

(1) Ensure that small businesses, minority-owned firms, and women's business enterprises are used to the fullest extent practicable.

(2) Make information on forthcoming opportunities available and arrange time frames for purchases and contracts to encourage and facilitate participation by small businesses, minority-owned firms, and women's business enterprises.

(3) Consider in the contract process whether firms competing for larger contracts intend to subcontract with small businesses, minority-owned firms, and women's business enterprises.

(4) Encourage contracting with consortiums of small businesses, minority-owned firms and women's business enterprises when a contract is too large for one of these firms to handle individually.

(5) Use the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Department of Commerce's Minority Business Development Agency in the solicitation and utilization of small businesses, minority-owned firms and women's business enterprises.

(c) The type of procuring instruments used (*e.g.*, fixed price contracts, cost reimbursable contracts, purchase orders, and incentive contracts) shall be determined by the recipient but shall be appropriate for the particular procurement and for promoting the best interest of the program or project involved. The “cost-plus-a-percentage-of-cost” or “percentage of construction cost” methods of contracting shall not be used.

(d) Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources or accessibility to other necessary resources. In certain circumstances, contracts with certain parties are restricted by agencies' implementation of E.O.s 12549 and 12689, “Debarment and Suspension.”

(e) Recipients shall, on request, make available for the Federal awarding agency, pre-award review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, etc., when any of the following conditions apply.

(1) A recipient's procurement procedures or operation fails to comply with the procurement standards in the Federal awarding agency's implementation of this part.

(2) The procurement is expected to exceed the small purchase threshold fixed at 41 U.S.C. 403 (11) (currently \$25,000) and is to be awarded without competition or only one bid or offer is received in response to a solicitation.

(3) The procurement, which is expected to exceed the small purchase threshold, specifies a "brand name" product.

(4) The proposed award over the small purchase threshold is to be awarded to other than the apparent low bidder under a sealed bid procurement.

(5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the amount of the small purchase threshold.

§ 215.45 Cost and price analysis.

Some form of cost or price analysis shall be made and documented in the procurement files in connection with every procurement action. Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices and similar indicia, together with discounts. Cost analysis is the review and evaluation of each element of cost to determine reasonableness, allocability and allowability.

§ 215.46 Procurement records.

Procurement records and files for purchases in excess of the small purchase threshold shall include the following at a minimum:

(a) Basis for contractor selection;

(b) Justification for lack of competition when competitive bids or offers are not obtained; and

(c) Basis for award cost or price.

§ 215.47 Contract administration.

A system for contract administration shall be maintained to ensure contractor conformance with the terms, conditions and specifications of the contract and to ensure adequate and timely follow up of all purchases. Recipients shall evaluate contractor

performance and document, as appropriate, whether contractors have met the terms, conditions and specifications of the contract.

§ 215.48 Contract provisions.

The recipient shall include, in addition to provisions to define a sound and complete agreement, the following provisions in all contracts. The following provisions shall also be applied to subcontracts.

- (a) Contracts in excess of the small purchase threshold shall contain contractual provisions or conditions that allow for administrative, contractual, or legal remedies in instances in which a contractor violates or breaches the contract terms, and provide for such remedial actions as may be appropriate.
- (b) All contracts in excess of the small purchase threshold shall contain suitable provisions for termination by the recipient, including the manner by which termination shall be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.
- (c) Except as otherwise required by statute, an award that requires the contracting (or subcontracting) for construction or facility improvements shall provide for the recipient to follow its own requirements relating to bid guarantees, performance bonds, and payment bonds unless the construction contract or subcontract exceeds \$100,000. For those contracts or subcontracts exceeding \$100,000, the Federal awarding agency may accept the bonding policy and requirements of the recipient, provided the Federal awarding agency has made a determination that the Federal Government's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows.
 - (1) A bid guarantee from each bidder equivalent to five percent of the bid price. The “bid guarantee” shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder shall, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.
 - (2) A performance bond on the part of the contractor for 100 percent of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
 - (3) A payment bond on the part of the contractor for 100 percent of the contract price. A “payment bond” is one executed in connection with a contract to assure payment as required by statute of all persons supplying labor and material in the execution of the work provided for in the contract.

(4) Where bonds are required in the situations described herein, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties pursuant to 31 CFR part 223, "Surety Companies Doing Business with the United States."

(d) All negotiated contracts (except those for less than the small purchase threshold) awarded by recipients shall include a provision to the effect that the recipient, the Federal awarding agency, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the contractor which are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts and transcriptions.

(e) All contracts, including small purchases, awarded by recipients and their contractors shall contain the procurement provisions of appendix A to this part, as applicable.

Reports and Records

§ 215.50 Purpose of reports and records.

Sections 215.51 through 215.53 set forth the procedures for monitoring and reporting on the recipient's financial and program performance and the necessary standard reporting forms. They also set forth record retention requirements.

§ 215.51 Monitoring and reporting program performance.

(a) Recipients are responsible for managing and monitoring each project, program, subaward, function or activity supported by the award. Recipients shall monitor subawards to ensure subrecipients have met the audit requirements as delineated in §215.26.

(b) The Federal awarding agency shall prescribe the frequency with which the performance reports shall be submitted. Except as provided in §215.51(f), performance reports shall not be required more frequently than quarterly or, less frequently than annually. Annual reports shall be due 90 calendar days after the grant year; quarterly or semi-annual reports shall be due 30 days after the reporting period. The Federal awarding agency may require annual reports before the anniversary dates of multiple year awards in lieu of these requirements. The final performance reports are due 90 calendar days after the expiration or termination of the award.

(c) If inappropriate, a final technical or performance report shall not be required after completion of the project.

(d) When required, performance reports shall generally contain, for each award, brief information on each of the following.

(1) A comparison of actual accomplishments with the goals and objectives established for the period, the findings of the investigator, or both. Whenever appropriate and the output

of programs or projects can be readily quantified, such quantitative data should be related to cost data for computation of unit costs.

(2) Reasons why established goals were not met, if appropriate.

(3) Other pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

(e) Recipients shall not be required to submit more than the original and two copies of performance reports.

(f) Recipients shall immediately notify the Federal awarding agency of developments that have a significant impact on the award-supported activities. Also, notification shall be given in the case of problems, delays, or adverse conditions which materially impair the ability to meet the objectives of the award. This notification shall include a statement of the action taken or contemplated, and any assistance needed to resolve the situation.

(g) Federal awarding agencies may make site visits, as needed.

(h) Federal awarding agencies shall comply with clearance requirements of 5 CFR part 1320 when requesting performance data from recipients.

§ 215.52 Financial reporting.

(a) The following forms or such other forms as may be approved by OMB are authorized for obtaining financial information from recipients.

(1) SF-269 or SF-269A, Financial Status Report.

(i) Each Federal awarding agency shall require recipients to use the SF-269 or SF-269A to report the status of funds for all nonconstruction projects or programs. A Federal awarding agency may, however, have the option of not requiring the SF-269 or SF-269A when the SF-270, Request for Advance or Reimbursement, or SF-272, Report of Federal Cash Transactions, is determined to provide adequate information to meet its needs, except that a final SF-269 or SF-269A shall be required at the completion of the project when the SF-270 is used only for advances.

(ii) The Federal awarding agency shall prescribe whether the report shall be on a cash or accrual basis. If the Federal awarding agency requires accrual information and the recipient's accounting records are not normally kept on the accrual basis, the recipient shall not be required to convert its accounting system, but shall develop such accrual information through best estimates based on an analysis of the documentation on hand.

(iii) The Federal awarding agency shall determine the frequency of the Financial Status Report for each project or program, considering the size and complexity of the particular project or program. However, the report shall not be required more frequently than

quarterly or less frequently than annually. A final report shall be required at the completion of the agreement.

(iv) The Federal awarding agency shall require recipients to submit the SF-269 or SF-269A (an original and no more than two copies) no later than 30 days after the end of each specified reporting period for quarterly and semi-annual reports, and 90 calendar days for annual and final reports. Extensions of reporting due dates may be approved by the Federal awarding agency upon request of the recipient.

(2) SF-272, Report of Federal Cash Transactions.

(i) When funds are advanced to recipients the Federal awarding agency shall require each recipient to submit the SF-272 and, when necessary, its continuation sheet, SF-272a. The Federal awarding agency shall use this report to monitor cash advanced to recipients and to obtain disbursement information for each agreement with the recipients.

(ii) Federal awarding agencies may require forecasts of Federal cash requirements in the "Remarks" section of the report.

(iii) When practical and deemed necessary, Federal awarding agencies may require recipients to report in the "Remarks" section the amount of cash advances received in excess of three days. Recipients shall provide short narrative explanations of actions taken to reduce the excess balances.

(iv) Recipients shall be required to submit not more than the original and two copies of the SF-272 15 calendar days following the end of each quarter. The Federal awarding agencies may require a monthly report from those recipients receiving advances totaling \$1 million or more per year.

(v) Federal awarding agencies may waive the requirement for submission of the SF-272 for any one of the following reasons:

(A) When monthly advances do not exceed \$25,000 per recipient, provided that such advances are monitored through other forms contained in this section;

(B) If, in the Federal awarding agency's opinion, the recipient's accounting controls are adequate to minimize excessive Federal advances; or,

(C) When the electronic payment mechanisms provide adequate data.

(b) When the Federal awarding agency needs additional information or more frequent reports, the following shall be observed.

(1) When additional information is needed to comply with legislative requirements, Federal awarding agencies shall issue instructions to require recipients to submit such information under the "Remarks" section of the reports.

(2) When a Federal awarding agency determines that a recipient's accounting system does not meet the standards in §215.21, additional pertinent information to further monitor awards may be obtained upon written notice to the recipient until such time as the system is brought up to standard. The Federal awarding agency, in obtaining this information, shall comply with report clearance requirements of 5 CFR part 1320.

(3) Federal awarding agencies are encouraged to shade out any line item on any report if not necessary.

(4) Federal awarding agencies may accept the identical information from the recipients in machine readable format or computer printouts or electronic outputs in lieu of prescribed formats.

(5) Federal awarding agencies may provide computer or electronic outputs to recipients when such expedites or contributes to the accuracy of reporting.

§ 215.53 Retention and access requirements for records.

(a) This section sets forth requirements for record retention and access to records for awards to recipients. Federal awarding agencies shall not impose any other record retention or access requirements upon recipients.

(b) Financial records, supporting documents, statistical records, and all other records pertinent to an award shall be retained for a period of three years from the date of submission of the final expenditure report or, for awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, as authorized by the Federal awarding agency. The only exceptions are the following.

(1) If any litigation, claim, or audit is started before the expiration of the 3-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved and final action taken.

(2) Records for real property and equipment acquired with Federal funds shall be retained for 3 years after final disposition.

(3) When records are transferred to or maintained by the Federal awarding agency, the 3-year retention requirement is not applicable to the recipient.

(4) Indirect cost rate proposals, cost allocations plans, etc. as specified in §215.53(g).

(c) Copies of original records may be substituted for the original records if authorized by the Federal awarding agency.

(d) The Federal awarding agency shall request transfer of certain records to its custody from recipients when it determines that the records possess long term retention value. However, in order to avoid duplicate recordkeeping, a Federal awarding agency may

make arrangements for recipients to retain any records that are continuously needed for joint use.

(e) The Federal awarding agency, the Inspector General, Comptroller General of the United States, or any of their duly authorized representatives, have the right of timely and unrestricted access to any books, documents, papers, or other records of recipients that are pertinent to the awards, in order to make audits, examinations, excerpts, transcripts and copies of such documents. This right also includes timely and reasonable access to a recipient's personnel for the purpose of interview and discussion related to such documents. The rights of access in this paragraph are not limited to the required retention period, but shall last as long as records are retained.

(f) Unless required by statute, no Federal awarding agency shall place restrictions on recipients that limit public access to the records of recipients that are pertinent to an award, except when the Federal awarding agency can demonstrate that such records shall be kept confidential and would have been exempted from disclosure pursuant to the Freedom of Information Act (5 U.S.C. 552) if the records had belonged to the Federal awarding agency.

(g) *Indirect cost rate proposals, cost allocations plans, etc.* Paragraphs (g)(1) and (g)(2) of this section apply to the following types of documents, and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

(1) *If submitted for negotiation.* If the recipient submits to the Federal awarding agency or the subrecipient submits to the recipient the proposal, plan, or other computation to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts on the date of such submission.

(2) *If not submitted for negotiation.* If the recipient is not required to submit to the Federal awarding agency or the subrecipient is not required to submit to the recipient the proposal, plan, or other computation for negotiation purposes, then the 3-year retention period for the proposal, plan, or other computation and its supporting records starts at the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

Termination and Enforcement

§ 215.60 Purpose of termination and enforcement.

Sections 215.61 and 215.62 set forth uniform suspension, termination and enforcement procedures.

§ 215.61 Termination.

(a) Awards may be terminated in whole or in part only if paragraphs (a)(1), (2) or (3) of this section apply.

(1) By the Federal awarding agency, if a recipient materially fails to comply with the terms and conditions of an award.

(2) By the Federal awarding agency 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.

(3) By the recipient upon sending to the Federal awarding agency 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 Federal awarding agency 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 under either paragraphs (a)(1) or (2) of this section.

(b) If costs are allowed under an award, the responsibilities of the recipient referred to in §215.71(a), including those for property management as applicable, shall be considered in the termination of the award, and provision shall be made for continuing responsibilities of the recipient after termination, as appropriate.

§ 215.62 Enforcement.

(a) *Remedies for noncompliance.* If a recipient materially fails to comply with the terms and conditions of an award, whether stated in a Federal statute, regulation, assurance, application, or notice of award, the Federal awarding agency may, in addition to imposing any of the special conditions outlined in §215.14, take one or more of the following actions, as appropriate in the circumstances.

(1) Temporarily withhold cash payments pending correction of the deficiency by the recipient or more severe enforcement action by the Federal awarding agency.

(2) Disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance.

(3) Wholly or partly suspend or terminate the current award.

(4) Withhold further awards for the project or program.

(5) Take other remedies that may be legally available.

(b) *Hearings and appeals.* In taking an enforcement action, the awarding agency shall provide the recipient an opportunity for hearing, appeal, or other administrative proceeding to which the recipient is entitled under any statute or regulation applicable to the action involved.

(c) *Effects of suspension and termination.* Costs of a recipient resulting from obligations incurred by the recipient during a suspension or after termination of an award are not allowable unless the awarding agency expressly authorizes them in the notice of suspension or termination or subsequently. Other recipient costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if paragraphs (c)(1) and (2) of this section apply.

(1) The costs result from obligations which were properly incurred by the recipient before the effective date of suspension or termination, are not in anticipation of it, and in the case of a termination, are noncancellable.

(2) The costs would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.

(d) *Relationship to debarment and suspension.* The enforcement remedies identified in this section, including suspension and termination, do not preclude a recipient from being subject to debarment and suspension under E.O.s 12549 and 12689 and the Federal awarding agency implementing regulations (see §215.13).

Subpart D—After-the-Award Requirements

§ 215.70 Purpose.

Sections 215.71 through 215.73 contain closeout procedures and other procedures for subsequent disallowances and adjustments.

§ 215.71 Closeout procedures.

(a) Recipients shall submit, within 90 calendar days after the date of completion of the award, all financial, performance, and other reports as required by the terms and conditions of the award. The Federal awarding agency may approve extensions when requested by the recipient.

(b) Unless the Federal awarding agency authorizes an extension, a recipient shall liquidate all obligations incurred under the award not later than 90 calendar days after the funding period or the date of completion as specified in the terms and conditions of the award or in agency implementing instructions.

(c) The Federal awarding agency shall make prompt payments to a recipient for allowable reimbursable costs under the award being closed out.

(d) The recipient shall promptly refund any balances of unobligated cash that the Federal awarding agency has advanced or paid and that is not authorized to be retained by the recipient for use in other projects. OMB Circular A-129 governs unreturned amounts that become delinquent debts.

(e) When authorized by the terms and conditions of the award, the Federal awarding agency shall make a settlement for any upward or downward adjustments to the Federal share of costs after closeout reports are received.

(f) The recipient shall account for any real and personal property acquired with Federal funds or received from the Federal Government in accordance with §215.31 through §215.37.

(g) In the event a final audit has not been performed prior to the closeout of an award, the Federal awarding agency shall retain the right to recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from the final audit.

§ 215.72 Subsequent adjustments and continuing responsibilities.

(a) The closeout of an award does not affect any of the following:

(1) The right of the Federal awarding agency to disallow costs and recover funds on the basis of a later audit or other review.

(2) The obligation of the recipient to return any funds due as a result of later refunds, corrections, or other transactions.

(3) Audit requirements in §215.26.

(4) Property management requirements in §215.31 through §215.37.

(5) Records retention as required in §215.53.

(b) After closeout of an award, a relationship created under an award may be modified or ended in whole or in part with the consent of the Federal awarding agency and the recipient, provided the responsibilities of the recipient referred to in paragraph (a) of this section, including those for property management as applicable, are considered and provisions made for continuing responsibilities of the recipient, as appropriate.

[69 FR 26281, May 11, 2004, as amended at 70 FR 51881, Aug. 31, 2005]

§ 215.73 Collection of amounts due.

(a) Any funds paid to a recipient in excess of the amount to which the recipient is finally determined to be entitled under the terms and conditions of the award constitute a debt to the Federal Government. If not paid within a reasonable period after the demand for payment, the Federal awarding agency may reduce the debt by paragraphs (a)(1), (2) or (3) of this section.

(1) Making an administrative offset against other requests for reimbursements.

(2) Withholding advance payments otherwise due to the recipient.

(3) Taking other action permitted by statute.

(b) Except as otherwise provided by law, the Federal awarding agency shall charge interest on an overdue debt in accordance with 4 CFR Chapter II, “Federal Claims Collection Standards.”

Appendix A to Part 215—Contract Provisions

All contracts, awarded by a recipient including small purchases, shall contain the following provisions as applicable:

1. *Equal Employment Opportunity* —All contracts shall contain a provision requiring compliance with E.O. 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR, 1964–1965 Comp., p. 339), as amended by E.O. 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and as supplemented by regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”
2. *Copeland “Anti-Kickback” Act (18 U.S.C. 874 and 40 U.S.C. 276c)* —All contracts and subgrants in excess of \$2000 for construction or repair awarded by recipients and subrecipients shall include a provision for compliance with the Copeland “Anti-Kickback” Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The recipient shall report all suspected or reported violations to the Federal awarding agency.
3. *Davis-Bacon Act, as amended (40 U.S.C. 276a to a-7)* —When required by Federal program legislation, all construction contracts awarded by the recipients and subrecipients of more than \$2000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) and as supplemented by Department of Labor regulations (29 CFR part 5, “Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction”). Under this Act, contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less than once a week. The recipient shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The recipient shall report all suspected or reported violations to the Federal awarding agency.

4. *Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333)* —Where applicable, all contracts awarded by recipients in excess of \$2000 for construction contracts and in excess of \$2500 for other contracts that involve the employment of mechanics or laborers shall include a provision for compliance with sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333), as supplemented by Department of Labor regulations (29 CFR part 5). Under section 102 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1 1/2 times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

5. *Rights to Inventions Made Under a Contract or Agreement* —Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

6. *Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended* —Contracts and subgrants of amounts in excess of \$100,000 shall contain a provision that requires the recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.). Violations shall be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

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

8. *Debarment and Suspension (E.O.s 12549 and 12689)*—A contract award with an amount expected to equal or exceed \$25,000 and certain other contract awards (see 2 CFR 180.220) shall not be made to parties listed on the government-wide Excluded Parties List System, in accordance with the OMB guidelines at 2 CFR part 180 that

implement E.O.s 12549 (3 CFR, 1986 Comp., p. 189) and 12689 (3 CFR, 1989 Comp., p. 235), "Debarment and Suspension." The Excluded Parties List System contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than E.O. 12549.

[69 FR 26281, May 11, 2004, as amended at 70 FR 51879, Aug. 31, 2005]

Title 2: Grants and Agreements

PART 230—COST PRINCIPLES FOR NON-PROFIT ORGANIZATIONS (OMB CIRCULAR A-122)

Section Contents

§ 230.5 Purpose.

§ 230.10 Scope.

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Appendix A to Part 230—General Principles

Appendix B to Part 230—Selected Items of Cost

Appendix C to Part 230—Non-Profit Organizations Not Subject to This Part

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

Source: 70 FR 51927, Aug. 31, 2005, unless otherwise noted.

§ 230.5 Purpose.

This part establishes principles for determining costs of grants, contracts and other agreements with non-profit organizations.

§ 230.10 Scope.

(a) This part does not apply to colleges and universities which are covered by 2 CFR part 220 Cost Principles for Educational Institutions (OMB Circular A-21); State, local, and federally-recognized Indian tribal governments which are covered by 2 CFR part 225 Cost Principles for State, Local, and Indian Tribal Governments (OMB Circular A-87); or hospitals.

(b) The principles deal with the subject of cost determination, and make no attempt to identify the circumstances or dictate the extent of agency and non-profit organization participation in the financing of a particular project. Provision for profit or other increment above cost is outside the scope of this part.

§ 230.15 Policy.

The principles are designed to provide that the Federal Government bear its fair share of costs except where restricted or prohibited by law. The principles do not attempt to

prescribe the extent of cost sharing or matching on grants, contracts, or other agreements. However, such cost sharing or matching shall not be accomplished through arbitrary limitations on individual cost elements by Federal agencies.

§ 230.20 Applicability.

(a) These principles shall be used by all Federal agencies in determining the costs of work performed by non-profit organizations under grants, cooperative agreements, cost reimbursement contracts, and other contracts in which costs are used in pricing, administration, or settlement. All of these instruments are hereafter referred to as awards. The principles do not apply to awards under which an organization is not required to account to the Federal Government for actual costs incurred.

(b) All cost reimbursement subawards (subgrants, subcontracts, etc.) are subject to those Federal cost principles applicable to the particular organization concerned. Thus, if a subaward is to a non-profit organization, this part shall apply; if a subaward is to a commercial organization, the cost principles applicable to commercial concerns shall apply; if a subaward is to a college or university, 2 CFR part 220 shall apply; if a subaward is to a State, local, or federally-recognized Indian tribal government, 2 CFR part 225 shall apply.

(c) Exclusion of some non-profit organizations. Some non-profit organizations, because of their size and nature of operations, can be considered to be similar to commercial concerns for purpose of applicability of cost principles. Such non-profit organizations shall operate under Federal cost principles applicable to commercial concerns. A listing of these organizations is contained in Appendix C to this part. Other organizations may be added from time to time.

§ 230.25 Definitions.

(a) Non-profit organization means any corporation, trust, association, cooperative, or other organization which:

(1) Is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest;

(2) Is not organized primarily for profit; and

(3) Uses its net proceeds to maintain, improve, and/or expand its operations. For this purpose, the term “non-profit organization” excludes colleges and universities; hospitals; State, local, and federally-recognized Indian tribal governments; and those non-profit organizations which are excluded from coverage of this part in accordance with §230.20(c).

(b) Prior approval means securing the awarding agency's permission in advance to incur cost for those items that are designated as requiring prior approval by the part and its

Appendices. Generally this permission will be in writing. Where an item of cost requiring prior approval is specified in the budget of an award, approval of the budget constitutes approval of that cost.

§ 230.30 OMB responsibilities.

OMB may grant exceptions to the requirements of this part when permissible under existing law. However, in the interest of achieving maximum uniformity, exceptions will be permitted only in highly unusual circumstances.

§ 230.35 Federal agency responsibilities.

The head of each Federal agency that awards and administers grants and agreements subject to this part is responsible for requesting approval from and/or consulting with OMB (as applicable) for deviations from the guidance in the appendices to this part and performing the applicable functions specified in the appendices to this part.

§ 230.40 Effective date of changes.

The provisions of this part are effective August 31, 2005. Implementation shall be phased in by incorporating the provisions into new awards made after the start of the organization's next fiscal year. For existing awards, the new principles may be applied if an organization and the cognizant Federal agency agree. Earlier implementation, or a delay in implementation of individual provisions, is also permitted by mutual agreement between an organization and the cognizant Federal agency.

§ 230.45 Relationship to previous issuance.

(a) The guidance in this part previously was issued as OMB Circular A-122. Appendix A to this part contains the guidance that was in Attachment A (general principles) to the OMB circular; Appendix B contains the guidance that was in Attachment B (selected items of cost) to the OMB circular; and Appendix C contains the information that was in Attachment C (non-profit organizations not subject to the Circular) to the OMB circular.

(b) Historically, OMB Circular A-122 superseded cost principles issued by individual agencies for non-profit organizations.

§ 230.50 Information contact.

Further information concerning this part may be obtained by contacting the Office of Federal Financial Management, OMB, Washington, DC 20503, telephone (202) 395-3993.

Appendix A to Part 230—General Principles

General Principles

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General Principles

A. Basic Considerations

1. Composition of total costs. The total cost of an award is the sum of the allowable direct and allocable indirect costs less any applicable credits.

2. Factors affecting allowability of costs. To be allowable under an award, costs must meet the following general criteria:

- a. Be reasonable for the performance of the award and be allocable thereto under these principles.
- b. Conform to any limitations or exclusions set forth in these principles or in the award as to types or amount of cost items.
- c. Be consistent with policies and procedures that apply uniformly to both federally-financed and other activities of the organization.
- d. Be accorded consistent treatment.
- e. Be determined in accordance with generally accepted accounting principles (GAAP).
- f. Not be included as a cost or used to meet cost sharing or matching requirements of any other federally-financed program in either the current or a prior period.

g. Be adequately documented.

3. Reasonable costs. A cost is reasonable if, in its nature or amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the costs. The question of the reasonableness of specific costs must be scrutinized with particular care in connection with organizations or separate divisions thereof which receive the preponderance of their support from awards made by Federal agencies. In determining the reasonableness of a given cost, consideration shall be given to:

a. Whether the cost is of a type generally recognized as ordinary and necessary for the operation of the organization or the performance of the award.

b. The restraints or requirements imposed by such factors as generally accepted sound business practices, arms length bargaining, Federal and State laws and regulations, and terms and conditions of the award.

c. Whether the individuals concerned acted with prudence in the circumstances, considering their responsibilities to the organization, its members, employees, and clients, the public at large, and the Federal Government.

d. Significant deviations from the established practices of the organization which may unjustifiably increase the award costs.

4. Allocable costs. a. A cost is allocable to a particular cost objective, such as a grant, contract, project, service, or other activity, in accordance with the relative benefits received. A cost is allocable to a Federal award if it is treated consistently with other costs incurred for the same purpose in like circumstances and if it:

(1) Is incurred specifically for the award.

(2) Benefits both the award and other work and can be distributed in reasonable proportion to the benefits received, or

(3) Is necessary to the overall operation of the organization, although a direct relationship to any particular cost objective cannot be shown.

b. Any cost allocable to a particular award or other cost objective under these principles may not be shifted to other Federal awards to overcome funding deficiencies, or to avoid restrictions imposed by law or by the terms of the award.

5. Applicable credits. a. The term applicable credits refers to those receipts, or reduction of expenditures which operate to offset or reduce expense items that are allocable to awards as direct or indirect costs. Typical examples of such transactions are: Purchase discounts, rebates or allowances, recoveries or indemnities on losses, insurance refunds, and adjustments of overpayments or erroneous charges. To the extent that such credits

accruing or received by the organization relate to allowable cost, they shall be credited to the Federal Government either as a cost reduction or cash refund, as appropriate.

b. In some instances, the amounts received from the Federal Government to finance organizational activities or service operations should be treated as applicable credits. Specifically, the concept of netting such credit items against related expenditures should be applied by the organization in determining the rates or amounts to be charged to Federal awards for services rendered whenever the facilities or other resources used in providing such services have been financed directly, in whole or in part, by Federal funds.

c. For rules covering program income (i.e., gross income earned from federally-supported activities) see §215.24 of 2 CFR part 215 Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations (OMB Circular A-110).

6. Advance understandings. Under any given award, the reasonableness and allocability of certain items of costs may be difficult to determine. This is particularly true in connection with organizations that receive a preponderance of their support from Federal agencies. In order to avoid subsequent disallowance or dispute based on unreasonableness or nonallocability, it is often desirable to seek a written agreement with the cognizant or awarding agency in advance of the incurrence of special or unusual costs. The absence of an advance agreement on any element of cost will not, in itself, affect the reasonableness or allocability of that element.

7. Conditional exemptions. a. OMB authorizes conditional exemption from OMB administrative requirements and cost principles for certain Federal programs with statutorily-authorized consolidated planning and consolidated administrative funding, that are identified by a Federal agency and approved by the head of the Executive department or establishment. A Federal agency shall consult with OMB during its consideration of whether to grant such an exemption.

b. To promote efficiency in State and local program administration, when Federal non-entitlement programs with common purposes have specific statutorily-authorized consolidated planning and consolidated administrative funding and where most of the State agency's resources come from non-Federal sources, Federal agencies may exempt these covered State-administered, non-entitlement grant programs from certain OMB grants management requirements. The exemptions would be from all but the allocability of costs provisions of Appendix A, subsection C.e. of 2 CFR part 225 (OMB Circular A-87); Appendix A, Section C.4. of 2 CFR part 220 (OMB Circular A-21); Section A.4. of this appendix; and from all of the administrative requirements provisions of 2 CFR part 215 (OMB Circular A-110) and the agencies' grants management common rule.

c. When a Federal agency provides this flexibility, as a prerequisite to a State's exercising this option, a State must adopt its own written fiscal and administrative requirements for expending and accounting for all funds, which are consistent with the provisions of 2

CFR part 225 (OMB Circular A-87), and extend such policies to all subrecipients. These fiscal and administrative requirements must be sufficiently specific to ensure that: Funds are used in compliance with all applicable Federal statutory and regulatory provisions, costs are reasonable and necessary for operating these programs, and funds are not to be used for general expenses required to carry out other responsibilities of a State or its subrecipients.

B. Direct Costs

1. Direct costs are those that can be identified specifically with a particular final cost objective, i.e., a particular award, project, service, or other direct activity of an organization. However, a cost may not be assigned to an award as a direct cost if any other cost incurred for the same purpose, in like circumstance, has been allocated to an award as an indirect cost. Costs identified specifically with awards are direct costs of the awards and are to be assigned directly thereto. Costs identified specifically with other final cost objectives of the organization are direct costs of those cost objectives and are not to be assigned to other awards directly or indirectly.
2. Any direct cost of a minor amount may be treated as an indirect cost for reasons of practicality where the accounting treatment for such cost is consistently applied to all final cost objectives.
3. The cost of certain activities are not allowable as charges to Federal awards (see, for example, fundraising costs in paragraph 17 of Appendix B to this part). However, even though these costs are unallowable for purposes of computing charges to Federal awards, they nonetheless must be treated as direct costs for purposes of determining indirect cost rates and be allocated their share of the organization's indirect costs if they represent activities which include the salaries of personnel, occupy space, and benefit from the organization's indirect costs.
4. The costs of activities performed primarily as a service to members, clients, or the general public when significant and necessary to the organization's mission must be treated as direct costs whether or not allowable and be allocated an equitable share of indirect costs. Some examples of these types of activities include:
 - a. Maintenance of membership rolls, subscriptions, publications, and related functions.
 - b. Providing services and information to members, legislative or administrative bodies, or the public.
 - c. Promotion, lobbying, and other forms of public relations.
 - d. Meetings and conferences except those held to conduct the general administration of the organization.

e. Maintenance, protection, and investment of special funds not used in operation of the organization.

f. Administration of group benefits on behalf of members or clients, including life and hospital insurance, annuity or retirement plans, financial aid, etc.

C. Indirect Costs

1. Indirect costs are those that have been incurred for common or joint objectives and cannot be readily identified with a particular final cost objective. Direct cost of minor amounts may be treated as indirect costs under the conditions described in subparagraph B.2 of this appendix. After direct costs have been determined and assigned directly to awards or other work as appropriate, indirect costs are those remaining to be allocated to benefiting cost objectives. A cost may not be allocated to an award as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been assigned to an award as a direct cost.

2. Because of the diverse characteristics and accounting practices of non-profit organizations, it is not possible to specify the types of cost which may be classified as indirect cost in all situations. However, typical examples of indirect cost for many non-profit organizations may include depreciation or use allowances on buildings and equipment, the costs of operating and maintaining facilities, and general administration and general expenses, such as the salaries and expenses of executive officers, personnel administration, and accounting.

3. Indirect costs shall be classified within two broad categories: "Facilities" and "Administration." "Facilities" is defined as depreciation and use allowances on buildings, equipment and capital improvement, interest on debt associated with certain buildings, equipment and capital improvements, and operations and maintenance expenses. "Administration" is defined as general administration and general expenses such as the director's office, accounting, personnel, library expenses and all other types of expenditures not listed specifically under one of the subcategories of "Facilities" (including cross allocations from other pools, where applicable). See indirect cost rate reporting requirements in subparagraphs D.2.e and D.3.g of this appendix.

D. Allocation of Indirect Costs and Determination of Indirect Cost Rates

1. General. a. Where a non-profit organization has only one major function, or where all its major functions benefit from its indirect costs to approximately the same degree, the allocation of indirect costs and the computation of an indirect cost rate may be accomplished through simplified allocation procedures, as described in subparagraph D.2 of this appendix.

b. Where an organization has several major functions which benefit from its indirect costs in varying degrees, allocation of indirect costs may require the accumulation of such costs into separate cost groupings which then are allocated individually to benefiting

functions by means of a base which best measures the relative degree of benefit. The indirect costs allocated to each function are then distributed to individual awards and other activities included in that function by means of an indirect cost rate(s).

c. The determination of what constitutes an organization's major functions will depend on its purpose in being; the types of services it renders to the public, its clients, and its members; and the amount of effort it devotes to such activities as fundraising, public information and membership activities.

d. Specific methods for allocating indirect costs and computing indirect cost rates along with the conditions under which each method should be used are described in subparagraphs D.2 through 5 of this appendix.

e. The base period for the allocation of indirect costs is the period in which such costs are incurred and accumulated for allocation to work performed in that period. The base period normally should coincide with the organization's fiscal year but, in any event, shall be so selected as to avoid inequities in the allocation of the costs.

2. Simplified allocation method. a. Where an organization's major functions benefit from its indirect costs to approximately the same degree, the allocation of indirect costs may be accomplished by separating the organization's total costs for the base period as either direct or indirect, and dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to individual awards. The rate should be expressed as the percentage which the total amount of allowable indirect costs bears to the base selected. This method should also be used where an organization has only one major function encompassing a number of individual projects or activities, and may be used where the level of Federal awards to an organization is relatively small.

b. Both the direct costs and the indirect costs shall exclude capital expenditures and unallowable costs. However, unallowable costs which represent activities must be included in the direct costs under the conditions described in subparagraph B.3 of this appendix.

c. The distribution base may be total direct costs (excluding capital expenditures and other distorting items, such as major subcontracts or subgrants), direct salaries and wages, or other base which results in an equitable distribution. The distribution base shall generally exclude participant support costs as defined in paragraph 32 of Appendix B.

d. Except where a special rate(s) is required in accordance with subparagraph 5 of this appendix, the indirect cost rate developed under the above principles is applicable to all awards at the organization. If a special rate(s) is required, appropriate modifications shall be made in order to develop the special rate(s).

e. For an organization that receives more than \$10 million in Federal funding of direct costs in a fiscal year, a breakout of the indirect cost component into two broad categories,

Facilities and Administration as defined in subparagraph C.3 of this appendix, is required. The rate in each case shall be stated as the percentage which the amount of the particular indirect cost category (*i.e.* , Facilities or Administration) is of the distribution base identified with that category.

3. Multiple allocation base method.

a. General. Where an organization's indirect costs benefit its major functions in varying degrees, indirect costs shall be accumulated into separate cost groupings, as described in subparagraph D.3.b of this appendix. Each grouping shall then be allocated individually to benefiting functions by means of a base which best measures the relative benefits. The default allocation bases by cost pool are described in subparagraph D.3.c of this appendix.

b. Identification of indirect costs. Cost groupings shall be established so as to permit the allocation of each grouping on the basis of benefits provided to the major functions. Each grouping shall constitute a pool of expenses that are of like character in terms of functions they benefit and in terms of the allocation base which best measures the relative benefits provided to each function. The groupings are classified within the two broad categories: "Facilities" and "Administration," as described in subparagraph C.3 of this appendix. The indirect cost pools are defined as follows:

(1) Depreciation and use allowances. The expenses under this heading are the portion of the costs of the organization's buildings, capital improvements to land and buildings, and equipment which are computed in accordance with paragraph 11 of Appendix B to this part ("Depreciation and use allowances").

(2) Interest. Interest on debt associated with certain buildings, equipment and capital improvements are computed in accordance with paragraph 23 of Appendix B to this part ("Interest").

(3) Operation and maintenance expenses. The expenses under this heading are those that have been incurred for the administration, operation, maintenance, preservation, and protection of the organization's physical plant. They include expenses normally incurred for such items as: Janitorial and utility services; repairs and ordinary or normal alterations of buildings, furniture and equipment; care of grounds; maintenance and operation of buildings and other plant facilities; security; earthquake and disaster preparedness; environmental safety; hazardous waste disposal; property, liability and other insurance relating to property; space and capital leasing; facility planning and management; and, central receiving. The operation and maintenance expenses category shall also include its allocable share of fringe benefit costs, depreciation and use allowances, and interest costs.

(4) General administration and general expenses. (a) The expenses under this heading are those that have been incurred for the overall general executive and administrative offices of the organization and other expenses of a general nature which do not relate solely to

any major function of the organization. This category shall also include its allocable share of fringe benefit costs, operation and maintenance expense, depreciation and use allowances, and interest costs. Examples of this category include central offices, such as the director's office, the office of finance, business services, budget and planning, personnel, safety and risk management, general counsel, management information systems, and library costs.

(b) In developing this cost pool, special care should be exercised to ensure that costs incurred for the same purpose in like circumstances are treated consistently as either direct or indirect costs. For example, salaries of technical staff, project supplies, project publication, telephone toll charges, computer costs, travel costs, and specialized services costs shall be treated as direct costs wherever identifiable to a particular program. The salaries and wages of administrative and pooled clerical staff should normally be treated as indirect costs. Direct charging of these costs may be appropriate where a major project or activity explicitly requires and budgets for administrative or clerical services and other individuals involved can be identified with the program or activity. Items such as office supplies, postage, local telephone costs, periodicals and memberships should normally be treated as indirect costs.

c. Allocation bases. Actual conditions shall be taken into account in selecting the base to be used in allocating the expenses in each grouping to benefiting functions. The essential consideration in selecting a method or a base is that it is the one best suited for assigning the pool of costs to cost objectives in accordance with benefits derived; a traceable cause and effect relationship; or logic and reason, where neither the cause nor the effect of the relationship is determinable. When an allocation can be made by assignment of a cost grouping directly to the function benefited, the allocation shall be made in that manner. When the expenses in a cost grouping are more general in nature, the allocation shall be made through the use of a selected base which produces results that are equitable to both the Federal Government and the organization. The distribution shall be made in accordance with the bases described herein unless it can be demonstrated that the use of a different base would result in a more equitable allocation of the costs, or that a more readily available base would not increase the costs charged to sponsored awards. The results of special cost studies (such as an engineering utility study) shall not be used to determine and allocate the indirect costs to sponsored awards.

(1) Depreciation and use allowances. Depreciation and use allowances expenses shall be allocated in the following manner:

(a) Depreciation or use allowances on buildings used exclusively in the conduct of a single function, and on capital improvements and equipment used in such buildings, shall be assigned to that function.

(b) Depreciation or use allowances on buildings used for more than one function, and on capital improvements and equipment used in such buildings, shall be allocated to the individual functions performed in each building on the basis of usable square feet of space, excluding common areas, such as hallways, stairwells, and restrooms.

(c) Depreciation or use allowances on buildings, capital improvements and equipment related space (*e.g.* , individual rooms, and laboratories) used jointly by more than one function (as determined by the users of the space) shall be treated as follows. The cost of each jointly used unit of space shall be allocated to the benefiting functions on the basis of either the employees and other users on a full-time equivalent (FTE) basis or salaries and wages of those individual functions benefiting from the use of that space; or organization-wide employee FTEs or salaries and wages applicable to the benefiting functions of the organization.

(d) Depreciation or use allowances on certain capital improvements to land, such as paved parking areas, fences, sidewalks, and the like, not included in the cost of buildings, shall be allocated to user categories on a FTE basis and distributed to major functions in proportion to the salaries and wages of all employees applicable to the functions.

(2) Interest. Interest costs shall be allocated in the same manner as the depreciation or use allowances on the buildings, equipment and capital equipments to which the interest relates.

(3) Operation and maintenance expenses. Operation and maintenance expenses shall be allocated in the same manner as the depreciation and use allowances.

(4) General administration and general expenses. General administration and general expenses shall be allocated to benefiting functions based on modified total direct costs (MTDC), as described in subparagraph D.3.f of this appendix. The expenses included in this category could be grouped first according to major functions of the organization to which they render services or provide benefits. The aggregate expenses of each group shall then be allocated to benefiting functions based on MTDC.

d. Order of distribution. (1) Indirect cost categories consisting of depreciation and use allowances, interest, operation and maintenance, and general administration and general expenses shall be allocated in that order to the remaining indirect cost categories as well as to the major functions of the organization. Other cost categories could be allocated in the order determined to be most appropriate by the organization. When cross allocation of costs is made as provided in subparagraph D.3.d.(2) of this appendix, this order of allocation does not apply.

(2) Normally, an indirect cost category will be considered closed once it has been allocated to other cost objectives, and costs shall not be subsequently allocated to it. However, a cross allocation of costs between two or more indirect costs categories could be used if such allocation will result in a more equitable allocation of costs. If a cross allocation is used, an appropriate modification to the composition of the indirect cost categories is required.

e. Application of indirect cost rate or rates. Except where a special indirect cost rate(s) is required in accordance with subparagraph D.5 of this appendix, the separate groupings of indirect costs allocated to each major function shall be aggregated and treated as a

common pool for that function. The costs in the common pool shall then be distributed to individual awards included in that function by use of a single indirect cost rate.

f. Distribution basis. Indirect costs shall be distributed to applicable sponsored awards and other benefiting activities within each major function on the basis of MTDC. MTDC consists of all salaries and wages, fringe benefits, materials and supplies, services, travel, and subgrants and subcontracts up to the first \$25,000 of each subgrant or subcontract (regardless of the period covered by the subgrant or subcontract). Equipment, capital expenditures, charges for patient care, rental costs and the portion in excess of \$25,000 shall be excluded from MTDC. Participant support costs shall generally be excluded from MTDC. Other items may only be excluded when the Federal cost cognizant agency determines that an exclusion is necessary to avoid a serious inequity in the distribution of indirect costs.

g. Individual Rate Components. An indirect cost rate shall be determined for each separate indirect cost pool developed. The rate in each case shall be stated as the percentage which the amount of the particular indirect cost pool is of the distribution base identified with that pool. Each indirect cost rate negotiation or determination agreement shall include development of the rate for each indirect cost pool as well as the overall indirect cost rate. The indirect cost pools shall be classified within two broad categories: "Facilities" and "Administration," as described in subparagraph C.3 of this appendix.

4. Direct allocation method. a. Some non-profit organizations treat all costs as direct costs except general administration and general expenses. These organizations generally separate their costs into three basic categories: General administration and general expenses, fundraising, and other direct functions (including projects performed under Federal awards). Joint costs, such as depreciation, rental costs, operation and maintenance of facilities, telephone expenses, and the like are prorated individually as direct costs to each category and to each award or other activity using a base most appropriate to the particular cost being prorated.

b. This method is acceptable, provided each joint cost is prorated using a base which accurately measures the benefits provided to each award or other activity. The bases must be established in accordance with reasonable criteria, and be supported by current data. This method is compatible with the Standards of Accounting and Financial Reporting for Voluntary Health and Welfare Organizations issued jointly by the National Health Council, Inc., the National Assembly of Voluntary Health and Social Welfare Organizations, and the United Way of America.

c. Under this method, indirect costs consist exclusively of general administration and general expenses. In all other respects, the organization's indirect cost rates shall be computed in the same manner as that described in subparagraph D.2 of this appendix.

5. Special indirect cost rates. In some instances, a single indirect cost rate for all activities of an organization or for each major function of the organization may not be appropriate, since it would not take into account those different factors which may substantially affect

the indirect costs applicable to a particular segment of work. For this purpose, a particular segment of work may be that performed under a single award or it may consist of work under a group of awards performed in a common environment. These factors may include the physical location of the work, the level of administrative support required, the nature of the facilities or other resources employed, the scientific disciplines or technical skills involved, the organizational arrangements used, or any combination thereof. When a particular segment of work is performed in an environment which appears to generate a significantly different level of indirect costs, provisions should be made for a separate indirect cost pool applicable to such work. The separate indirect cost pool should be developed during the course of the regular allocation process, and the separate indirect cost rate resulting therefrom should be used, provided it is determined that the rate differs significantly from that which would have been obtained under subparagraphs D.2, 3, and 4 of this appendix, and the volume of work to which the rate would apply is material.

E. Negotiation and Approval of Indirect Cost Rates

1. Definitions. As used in this section, the following terms have the meanings set forth below:

a. Cognizant agency means the Federal agency responsible for negotiating and approving indirect cost rates for a non-profit organization on behalf of all Federal agencies.

b. Predetermined rate means an indirect cost rate, applicable to a specified current or future period, usually the organization's fiscal year. The rate is based on an estimate of the costs to be incurred during the period. A predetermined rate is not subject to adjustment.

c. Fixed rate means an indirect cost rate which has the same characteristics as a predetermined rate, except that the difference between the estimated costs and the actual costs of the period covered by the rate is carried forward as an adjustment to the rate computation of a subsequent period.

d. Final rate means an indirect cost rate applicable to a specified past period which is based on the actual costs of the period. A final rate is not subject to adjustment.

e. Provisional rate or billing rate means a temporary indirect cost rate applicable to a specified period which is used for funding, interim reimbursement, and reporting indirect costs on awards pending the establishment of a final rate for the period.

f. Indirect cost proposal means the documentation prepared by an organization to substantiate its claim for the reimbursement of indirect costs. This proposal provides the basis for the review and negotiation leading to the establishment of an organization's indirect cost rate.

g. Cost objective means a function, organizational subdivision, contract, grant, or other work unit for which cost data are desired and for which provision is made to accumulate and measure the cost of processes, projects, jobs and capitalized projects.

2. Negotiation and approval of rates. a. Unless different arrangements are agreed to by the agencies concerned, the Federal agency with the largest dollar value of awards with an organization will be designated as the cognizant agency for the negotiation and approval of the indirect cost rates and, where necessary, other rates such as fringe benefit and computer charge-out rates. Once an agency is assigned cognizance for a particular non-profit organization, the assignment will not be changed unless there is a major long-term shift in the dollar volume of the Federal awards to the organization. All concerned Federal agencies shall be given the opportunity to participate in the negotiation process but, after a rate has been agreed upon, it will be accepted by all Federal agencies. When a Federal agency has reason to believe that special operating factors affecting its awards necessitate special indirect cost rates in accordance with subparagraph D.5 of this appendix, it will, prior to the time the rates are negotiated, notify the cognizant agency.

b. A non-profit organization which has not previously established an indirect cost rate with a Federal agency shall submit its initial indirect cost proposal immediately after the organization is advised that an award will be made and, in no event, later than three months after the effective date of the award.

c. Organizations that have previously established indirect cost rates must submit a new indirect cost proposal to the cognizant agency within six months after the close of each fiscal year.

d. A predetermined rate may be negotiated for use on awards where there is reasonable assurance, based on past experience and reliable projection of the organization's costs, that the rate is not likely to exceed a rate based on the organization's actual costs.

e. Fixed rates may be negotiated where predetermined rates are not considered appropriate. A fixed rate, however, shall not be negotiated if all or a substantial portion of the organization's awards are expected to expire before the carry-forward adjustment can be made; the mix of Federal and non-Federal work at the organization is too erratic to permit an equitable carry-forward adjustment; or the organization's operations fluctuate significantly from year to year.

f. Provisional and final rates shall be negotiated where neither predetermined nor fixed rates are appropriate.

g. The results of each negotiation shall be formalized in a written agreement between the cognizant agency and the non-profit organization. The cognizant agency shall distribute copies of the agreement to all concerned Federal agencies.

h. If a dispute arises in a negotiation of an indirect cost rate between the cognizant agency and the non-profit organization, the dispute shall be resolved in accordance with the appeals procedures of the cognizant agency.

i. To the extent that problems are encountered among the Federal agencies in connection with the negotiation and approval process, OMB will lend assistance as required to resolve such problems in a timely manner.

Appendix B to Part 230—Selected Items of Cost

Selected Items of Cost

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Appendix B to Part 230—Selected Items of Cost

Paragraphs 1 through 52 of this appendix provide principles to be applied in establishing the allowability of certain items of cost. These principles apply whether a cost is treated as direct or indirect. Failure to mention a particular item of cost is not intended to imply that it is unallowable; rather, determination as to allowability in each case should be based on the treatment or principles provided for similar or related items of cost.

1. Advertising and public relations costs. a. The term advertising costs means the costs of advertising media and corollary administrative costs. Advertising media include

magazines, newspapers, radio and television, direct mail, exhibits, electronic or computer transmittals, and the like.

b. The term public relations includes community relations and means those activities dedicated to maintaining the image of the non-profit organization or maintaining or promoting understanding and favorable relations with the community or public at large or any segment of the public.

c. The only allowable advertising costs are those which are solely for:

(1) The recruitment of personnel required for the performance by the non-profit organization of obligations arising under a Federal award (See also paragraph 41, Recruiting costs, and paragraph 42, Relocation costs, of this appendix);

(2) The procurement of goods and services for the performance of a Federal award;

(3) The disposal of scrap or surplus materials acquired in the performance of a Federal award except when non-profit organizations are reimbursed for disposal costs at a predetermined amount; or

(4) Other specific purposes necessary to meet the requirements of the Federal award.

d. The only allowable public relations costs are:

(1) Costs specifically required by the Federal award;

(2) Costs of communicating with the public and press pertaining to specific activities or accomplishments which result from performance of Federal awards (these costs are considered necessary as part of the outreach effort for the Federal award); or

(3) Costs of conducting general liaison with news media and government public relations officers, to the extent that such activities are limited to communication and liaison necessary keep the public informed on matters of public concern, such as notices of Federal contract/grant awards, financial matters, etc.

e. Costs identified in subparagraphs c and d if incurred for more than one Federal award or for both sponsored work and other work of the non-profit organization, are allowable to the extent that the principles in Appendix A to this part, paragraphs B. (“Direct Costs”) and C. (“Indirect Costs”) are observed.

f. Unallowable advertising and public relations costs include the following:

(1) All advertising and public relations costs other than as specified in subparagraphs c, d, and e;

(2) Costs of meetings, conventions, convocations, or other events related to other activities of the non-profit organization, including:

(a) Costs of displays, demonstrations, and exhibits;

(b) Costs of meeting rooms, hospitality suites, and other special facilities used in conjunction with shows and other special events; and

(c) Salaries and wages of employees engaged in setting up and displaying exhibits, making demonstrations, and providing briefings;

(3) Costs of promotional items and memorabilia, including models, gifts, and souvenirs;

(4) Costs of advertising and public relations designed solely to promote the non-profit organization.

2. Advisory Councils. Costs incurred by advisory councils or committees are allowable as a direct cost where authorized by the Federal awarding agency or as an indirect cost where allocable to Federal awards.

3. Alcoholic beverages. Costs of alcoholic beverages are unallowable.

4. Audit costs and related services. a. The costs of audits required by, and performed in accordance with, the Single Audit Act, as implemented by Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations" are allowable. Also see 31 U.S.C. 7505(b) and section 230 ("Audit Costs") of Circular A-133.

b. Other audit costs are allowable if included in an indirect cost rate proposal, or if specifically approved by the awarding agency as a direct cost to an award.

c. The cost of agreed-upon procedures engagements to monitor subrecipients who are exempted from A-133 under section 200(d) are allowable, subject to the conditions listed in A-133, section 230 (b)(2).

5. Bad debts. Bad debts, including losses (whether actual or estimated) arising from uncollectable accounts and other claims, related collection costs, and related legal costs, are unallowable.

6. Bonding costs. a. Bonding costs arise when the Federal Government requires assurance against financial loss to itself or others by reason of the act or default of the non-profit organization. They arise also in instances where the non-profit organization requires similar assurance. Included are such bonds as bid, performance, payment, advance payment, infringement, and fidelity bonds.

b. Costs of bonding required pursuant to the terms of the award are allowable.

c. Costs of bonding required by the non-profit organization in the general conduct of its operations are allowable to the extent that such bonding is in accordance with sound business practice and the rates and premiums are reasonable under the circumstances.

7. Communication costs. Costs incurred for telephone services, local and long distance telephone calls, telegrams, postage, messenger, electronic or computer transmittal services and the like are allowable.

8. Compensation for personal services. a. Definition. Compensation for personal services includes all compensation paid currently or accrued by the organization for services of employees rendered during the period of the award (except as otherwise provided in subparagraph 8.h of this appendix). It includes, but is not limited to, salaries, wages, director's and executive committee member's fees, incentive awards, fringe benefits, pension plan costs, allowances for off-site pay, incentive pay, location allowances, hardship pay, and cost of living differentials.

b. Allowability. Except as otherwise specifically provided in this paragraph, the costs of such compensation are allowable to the extent that:

(1) Total compensation to individual employees is reasonable for the services rendered and conforms to the established policy of the organization consistently applied to both Federal and non-Federal activities; and

(2) Charges to awards whether treated as direct or indirect costs are determined and supported as required in this paragraph.

c. Reasonableness. (1) When the organization is predominantly engaged in activities other than those sponsored by the Federal Government, compensation for employees on federally-sponsored work will be considered reasonable to the extent that it is consistent with that paid for similar work in the organization's other activities.

(2) When the organization is predominantly engaged in federally-sponsored activities and in cases where the kind of employees required for the Federal activities are not found in the organization's other activities, compensation for employees on federally-sponsored work will be considered reasonable to the extent that it is comparable to that paid for similar work in the labor markets in which the organization competes for the kind of employees involved.

d. Special considerations in determining allowability. Certain conditions require special consideration and possible limitations in determining costs under Federal awards where amounts or types of compensation appear unreasonable. Among such conditions are the following:

(1) Compensation to members of non-profit organizations, trustees, directors, associates, officers, or the immediate families thereof. Determination should be made that such

compensation is reasonable for the actual personal services rendered rather than a distribution of earnings in excess of costs.

(2) Any change in an organization's compensation policy resulting in a substantial increase in the organization's level of compensation, particularly when it was concurrent with an increase in the ratio of Federal awards to other activities of the organization or any change in the treatment of allowability of specific types of compensation due to changes in Federal policy.

e. Unallowable costs. Costs which are unallowable under other paragraphs of this appendix shall not be allowable under this paragraph solely on the basis that they constitute personal compensation.

f. Overtime, extra-pay shift, and multi-shift premiums. Premiums for overtime, extra-pay shifts, and multi-shift work are allowable only with the prior approval of the awarding agency except:

(1) When necessary to cope with emergencies, such as those resulting from accidents, natural disasters, breakdowns of equipment, or occasional operational bottlenecks of a sporadic nature.

(2) When employees are performing indirect functions, such as administration, maintenance, or accounting.

(3) In the performance of tests, laboratory procedures, or other similar operations which are continuous in nature and cannot reasonably be interrupted or otherwise completed.

(4) When lower overall cost to the Federal Government will result.

g. Fringe benefits. (1) Fringe benefits in the form of regular compensation paid to employees during periods of authorized absences from the job, such as vacation leave, sick leave, military leave, and the like, are allowable, provided such costs are absorbed by all organization activities in proportion to the relative amount of time or effort actually devoted to each.

(2) Fringe benefits in the form of employer contributions or expenses for social security, employee insurance, workmen's compensation insurance, pension plan costs (see subparagraph 8.h of this appendix), and the like, are allowable, provided such benefits are granted in accordance with established written organization policies. Such benefits whether treated as indirect costs or as direct costs, shall be distributed to particular awards and other activities in a manner consistent with the pattern of benefits accruing to the individuals or group of employees whose salaries and wages are chargeable to such awards and other activities.

(3)(a) Provisions for a reserve under a self-insurance program for unemployment compensation or workers' compensation are allowable to the extent that the provisions

represent reasonable estimates of the liabilities for such compensation, and the types of coverage, extent of coverage, and rates and premiums would have been allowable had insurance been purchased to cover the risks. However, provisions for self-insured liabilities which do not become payable for more than one year after the provision is made shall not exceed the present value of the liability.

(b) Where an organization follows a consistent policy of expensing actual payments to, or on behalf of, employees or former employees for unemployment compensation or workers' compensation, such payments are allowable in the year of payment with the prior approval of the awarding agency, provided they are allocated to all activities of the organization.

(4) Costs of insurance on the lives of trustees, officers, or other employees holding positions of similar responsibility are allowable only to the extent that the insurance represents additional compensation. The costs of such insurance when the organization is named as beneficiary are unallowable.

h. Organization-furnished automobiles. That portion of the cost of organization-furnished automobiles that relates to personal use by employees (including transportation to and from work) is unallowable as fringe benefit or indirect costs regardless of whether the cost is reported as taxable income to the employees. These costs are allowable as direct costs to sponsored award when necessary for the performance of the sponsored award and approved by awarding agencies.

i. Pension plan costs. (1) Costs of the organization's pension plan which are incurred in accordance with the established policies of the organization are allowable, provided:

(a) Such policies meet the test of reasonableness;

(b) The methods of cost allocation are not discriminatory;

(c) The cost assigned to each fiscal year is determined in accordance with generally accepted accounting principles (GAAP), as prescribed in Accounting Principles Board Opinion No. 8 issued by the American Institute of Certified Public Accountants; and

(d) The costs assigned to a given fiscal year are funded for all plan participants within six months after the end of that year. However, increases to normal and past service pension costs caused by a delay in funding the actuarial liability beyond 30 days after each quarter of the year to which such costs are assignable are unallowable.

(2) Pension plan termination insurance premiums paid pursuant to the Employee Retirement Income Security Act (ERISA) of 1974 (Pub. L. 93-406) are allowable. Late payment charges on such premiums are unallowable.

(3) Excise taxes on accumulated funding deficiencies and other penalties imposed under ERISA are unallowable.

j. Incentive compensation. Incentive compensation to employees based on cost reduction, or efficient performance, suggestion awards, safety awards, etc., are allowable to the extent that the overall compensation is determined to be reasonable and such costs are paid or accrued pursuant to an agreement entered into in good faith between the organization and the employees before the services were rendered, or pursuant to an established plan followed by the organization so consistently as to imply, in effect, an agreement to make such payment.

k. Severance pay. (1) Severance pay, also commonly referred to as dismissal wages, is a payment in addition to regular salaries and wages, by organizations to workers whose employment is being terminated. Costs of severance pay are allowable only to the extent that in each case, it is required by:

(a) Law

(b) Employer-employee agreement

(c) Established policy that constitutes, in effect, an implied agreement on the organization's part, or

(d) Circumstances of the particular employment.

(2) Costs of severance payments are divided into two categories as follows:

(a) Actual normal turnover severance payments shall be allocated to all activities; or, where the organization provides for a reserve for normal severances, such method will be acceptable if the charge to current operations is reasonable in light of payments actually made for normal severances over a representative past period, and if amounts charged are allocated to all activities of the organization.

(b) Abnormal or mass severance pay is of such a conjectural nature that measurement of costs by means of an accrual will not achieve equity to both parties. Thus, accruals for this purpose are not allowable. However, the Federal Government recognizes its obligation to participate, to the extent of its fair share, in any specific payment. Thus, allowability will be considered on a case-by-case basis in the event or occurrence.

(c) Costs incurred in certain severance pay packages (commonly known as "a golden parachute" payment) which are in an amount in excess of the normal severance pay paid by the organization to an employee upon termination of employment and are paid to the employee contingent upon a change in management control over, or ownership of, the organization's assets are unallowable.

(d) Severance payments to foreign nationals employed by the organization outside the United States, to the extent that the amount exceeds the customary or prevailing practices for the organization in the United States are unallowable, unless they are necessary for the performance of Federal programs and approved by awarding agencies.

(e) Severance payments to foreign nationals employed by the organization outside the United States due to the termination of the foreign national as a result of the closing of, or curtailment of activities by, the organization in that country, are unallowable, unless they are necessary for the performance of Federal programs and approved by awarding agencies.

l. Training costs. See paragraph 49 of this appendix.

m. Support of salaries and wages.

(1) Charges to awards for salaries and wages, whether treated as direct costs or indirect costs, will be based on documented payrolls approved by a responsible official(s) of the organization. The distribution of salaries and wages to awards must be supported by personnel activity reports, as prescribed in subparagraph 8.m.(2) of this appendix, except when a substitute system has been approved in writing by the cognizant agency. (See subparagraph E.2 of Appendix A to this part.)

(2) Reports reflecting the distribution of activity of each employee must be maintained for all staff members (professionals and nonprofessionals) whose compensation is charged, in whole or in part, directly to awards. In addition, in order to support the allocation of indirect costs, such reports must also be maintained for other employees whose work involves two or more functions or activities if a distribution of their compensation between such functions or activities is needed in the determination of the organization's indirect cost rate(s) (*e.g.*, an employee engaged part-time in indirect cost activities and part-time in a direct function). Reports maintained by non-profit organizations to satisfy these requirements must meet the following standards:

(a) The reports must reflect an after-the-fact determination of the actual activity of each employee. Budget estimates (*i.e.*, estimates determined before the services are performed) do not qualify as support for charges to awards.

(b) Each report must account for the total activity for which employees are compensated and which is required in fulfillment of their obligations to the organization.

(c) The reports must be signed by the individual employee, or by a responsible supervisory official having first hand knowledge of the activities performed by the employee, that the distribution of activity represents a reasonable estimate of the actual work performed by the employee during the periods covered by the reports.

(d) The reports must be prepared at least monthly and must coincide with one or more pay periods.

(3) Charges for the salaries and wages of nonprofessional employees, in addition to the supporting documentation described in subparagraphs (1) and (2), must also be supported by records indicating the total number of hours worked each day maintained in conformance with Department of Labor regulations implementing the Fair Labor

Standards Act (FLSA) (29 CFR part 516). For this purpose, the term “nonprofessional employee” shall have the same meaning as “nonexempt employee,” under FLSA.

(4) Salaries and wages of employees used in meeting cost sharing or matching requirements on awards must be supported in the same manner as salaries and wages claimed for reimbursement from awarding agencies.

9. Contingency provisions. Contributions to a contingency reserve or any similar provision made for events the occurrence of which cannot be foretold with certainty as to time, intensity, or with an assurance of their happening, are unallowable. The term “contingency reserve” excludes self-insurance reserves (see Appendix B to this part, paragraphs 8.g.(3) and 22.a(2)(d)); pension funds (see paragraph 8.i): and reserves for normal severance pay (see paragraph 8.k.)

10. Defense and prosecution of criminal and civil proceedings, claims, appeals and patent infringement.

a. Definitions. (1) Conviction, as used herein, means a judgment or a conviction of a criminal offense by any court of competent jurisdiction, whether entered upon as a verdict or a plea, including a conviction due to a plea of nolo contendere.

(2) Costs include, but are not limited to, administrative and clerical expenses; the cost of legal services, whether performed by in-house or private counsel; and the costs of the services of accountants, consultants, or others retained by the organization to assist it; costs of employees, officers and trustees, and any similar costs incurred before, during, and after commencement of a judicial or administrative proceeding that bears a direct relationship to the proceedings.

(3) Fraud, as used herein, means acts of fraud corruption or attempts to defraud the Federal Government or to corrupt its agents, acts that constitute a cause for debarment or suspension (as specified in agency regulations), and acts which violate the False Claims Act, 31 U.S.C., sections 3729–3731, or the Anti-Kickback Act, 41 U.S.C., sections 51 and 54.

(4) Penalty does not include restitution, reimbursement, or compensatory damages.

(5) Proceeding includes an investigation.

b. (1) Except as otherwise described herein, costs incurred in connection with any criminal, civil or administrative proceeding (including filing of a false certification) commenced by the Federal Government, or a State, local or foreign government, are not allowable if the proceeding: Relates to a violation of, or failure to comply with, a Federal, State, local or foreign statute or regulation by the organization (including its agents and employees), and results in any of the following dispositions:

(a) In a criminal proceeding, a conviction.

(b) In a civil or administrative proceeding involving an allegation of fraud or similar misconduct, a determination of organizational liability.

(c) In the case of any civil or administrative proceeding, the imposition of a monetary penalty.

(d) A final decision by an appropriate Federal official to debar or suspend the organization, to rescind or void an award, or to terminate an award for default by reason of a violation or failure to comply with a law or regulation.

(e) A disposition by consent or compromise, if the action could have resulted in any of the dispositions described in subparagraphs 10.b.(1)(a), (b), (c) or (d) of this appendix.

(2) If more than one proceeding involves the same alleged misconduct, the costs of all such proceedings shall be unallowable if any one of them results in one of the dispositions shown in subparagraph 10.b.(1) of this appendix.

c. If a proceeding referred to in subparagraph 10.b of this appendix is commenced by the Federal Government and is resolved by consent or compromise pursuant to an agreement entered into by the organization and the Federal Government, then the costs incurred by the organization in connection with such proceedings that are otherwise not allowable under subparagraph 10.b of this appendix may be allowed to the extent specifically provided in such agreement.

d. If a proceeding referred to in subparagraph 10.b of this appendix is commenced by a State, local or foreign government, the authorized Federal official may allow the costs incurred by the organization for such proceedings, if such authorized official determines that the costs were incurred as a result of a specific term or condition of a federally-sponsored award, or specific written direction of an authorized official of the sponsoring agency.

e. Costs incurred in connection with proceedings described in subparagraph 10.b of this appendix, but which are not made unallowable by that subparagraph, may be allowed by the Federal Government, but only to the extent that:

(1) The costs are reasonable in relation to the activities required to deal with the proceeding and the underlying cause of action;

(2) Payment of the costs incurred, as allowable and allocable costs, is not prohibited by any other provision(s) of the sponsored award;

(3) The costs are not otherwise recovered from the Federal Government or a third party, either directly as a result of the proceeding or otherwise; and,

(4) The percentage of costs allowed does not exceed the percentage determined by an authorized Federal official to be appropriate, considering the complexity of the litigation,

generally accepted principles governing the award of legal fees in civil actions involving the United States as a party, and such other factors as may be appropriate. Such percentage shall not exceed 80 percent. However, if an agreement reached under subparagraph 10.c of this appendix has explicitly considered this 80 percent limitation and permitted a higher percentage, then the full amount of costs resulting from that agreement shall be allowable.

f. Costs incurred by the organization in connection with the defense of suits brought by its employees or ex-employees under section 2 of the Major Fraud Act of 1988 (Pub. L. 100-700), including the cost of all relief necessary to make such employee whole, where the organization was found liable or settled, are unallowable.

g. Costs of legal, accounting, and consultant services, and related costs, incurred in connection with defense against Federal Government claims or appeals, antitrust suits, or the prosecution of claims or appeals against the Federal Government, are unallowable.

h. Costs of legal, accounting, and consultant services, and related costs, incurred in connection with patent infringement litigation, are unallowable unless otherwise provided for in the sponsored awards.

i. Costs which may be unallowable under this paragraph, including directly associated costs, shall be segregated and accounted for by the organization separately. During the pendency of any proceeding covered by subparagraphs 10.b and f of this appendix, the Federal Government shall generally withhold payment of such costs. However, if in the best interests of the Federal Government, the Federal Government may provide for conditional payment upon provision of adequate security, or other adequate assurance, and agreements by the organization to repay all unallowable costs, plus interest, if the costs are subsequently determined to be unallowable.

11. Depreciation and use allowances. a. Compensation for the use of buildings, other capital improvements, and equipment on hand may be made through use allowance or depreciation. However, except as provided in paragraph 11.f of this appendix, a combination of the two methods may not be used in connection with a single class of fixed assets (*e.g.* , buildings, office equipment, computer equipment, etc.).

b. The computation of use allowances or depreciation shall be based on the acquisition cost of the assets involved. The acquisition cost of an asset donated to the non-profit organization by a third party shall be its fair market value at the time of the donation.

c. The computation of use allowances or depreciation will exclude:

(1) The cost of land;

(2) Any portion of the cost of buildings and equipment borne by or donated by the Federal Government irrespective of where title was originally vested or where it presently resides; and

(3) Any portion of the cost of buildings and equipment contributed by or for the non-profit organization in satisfaction of a statutory matching requirement.

d. General criteria where depreciation method is followed:

(1) The period of useful service (useful life) established in each case for usable capital assets must take into consideration such factors as type of construction, nature of the equipment used, technological developments in the particular program area, and the renewal and replacement policies followed for the individual items or classes of assets involved. The method of depreciation used to assign the cost of an asset (or group of assets) to accounting periods shall reflect the pattern of consumption of the asset during its useful life.

(2) In the absence of clear evidence indicating that the expected consumption of the asset will be significantly greater or lesser in the early portions of its useful life than in the later portions, the straight-line method shall be presumed to be the appropriate method.

(3) Depreciation methods once used shall not be changed unless approved in advance by the cognizant Federal agency. When the depreciation method is introduced for application to assets previously subject to a use allowance, the combination of use allowances and depreciation applicable to such assets must not exceed the total acquisition cost of the assets.

e. When the depreciation method is used for buildings, a building's shell may be segregated from each building component (*e.g.* , plumbing system, heating, and air conditioning system, etc.) and each item depreciated over its estimated useful life; or the entire building (*i.e.* , the shell and all components) may be treated as a single asset and depreciated over a single useful life.

f. When the depreciation method is used for a particular class of assets, no depreciation may be allowed on any such assets that, under subparagraph 11.d of this appendix, would be viewed as fully depreciated. However, a reasonable use allowance may be negotiated for such assets if warranted after taking into consideration the amount of depreciation previously charged to the Federal Government, the estimated useful life remaining at time of negotiation, the effect of any increased maintenance charges or decreased efficiency due to age, and any other factors pertinent to the utilization of the asset for the purpose contemplated.

g. Criteria where the use allowance method is followed:

(1) The use allowance for buildings and improvement (including land improvements, such as paved parking areas, fences, and sidewalks) will be computed at an annual rate not exceeding two percent of acquisition cost.

(2) The use allowance for equipment will be computed at an annual rate not exceeding six and two-thirds percent of acquisition cost. When the use allowance method is used for

buildings, the entire building must be treated as a single asset; the building's components (*e.g.* , plumbing system, heating and air conditioning, etc.) cannot be segregated from the building's shell.

(3) The two percent limitation, however, need not be applied to equipment which is merely attached or fastened to the building but not permanently fixed to it and which is used as furnishings or decorations or for specialized purposes (*e.g.* , dentist chairs and dental treatment units, counters, laboratory benches bolted to the floor, dishwashers, modular furniture, carpeting, etc.). Such equipment will be considered as not being permanently fixed to the building if it can be removed without the need for costly or extensive alterations or repairs to the building or the equipment. Equipment that meets these criteria will be subject to the 62/3percent equipment use allowance limitation.

h. Charges for use allowances or depreciation must be supported by adequate property records and physical inventories must be taken at least once every two years (a statistical sampling basis is acceptable) to ensure that assets exist and are usable and needed. When the depreciation method is followed, adequate depreciation records indicating the amount of depreciation taken each period must also be maintained.

12. Donations and contributions.

a. Contributions or donations rendered. Contributions or donations, including cash, property, and services, made by the organization, regardless of the recipient, are unallowable.

b. Donated services received:

(1) Donated or volunteer services may be furnished to an organization by professional and technical personnel, consultants, and other skilled and unskilled labor. The value of these services is not reimbursable either as a direct or indirect cost. However, the value of donated services may be used to meet cost sharing or matching requirements in accordance with the Common Rule.

(2) The value of donated services utilized in the performance of a direct cost activity shall, when material in amount, be considered in the determination of the non-profit organization's indirect costs or rate(s) and, accordingly, shall be allocated a proportionate share of applicable indirect costs when the following exist:

(a) The aggregate value of the services is material;

(b) The services are supported by a significant amount of the indirect costs incurred by the non-profit organization; and

(c) The direct cost activity is not pursued primarily for the benefit of the Federal Government.

(3) In those instances where there is no basis for determining the fair market value of the services rendered, the recipient and the cognizant agency shall negotiate an appropriate allocation of indirect cost to the services.

(4) Where donated services directly benefit a project supported by an award, the indirect costs allocated to the services will be considered as a part of the total costs of the project. Such indirect costs may be reimbursed under the award or used to meet cost sharing or matching requirements.

(5) The value of the donated services may be used to meet cost sharing or matching requirements under conditions described in Section 215.23 of 2 CFR part 215 (OMB Circular A-110). Where donated services are treated as indirect costs, indirect cost rates will separate the value of the donations so that reimbursement will not be made.

c. Donated goods or space. (1) Donated goods; *i.e.*, expendable personal property/supplies, and donated use of space may be furnished to a non-profit organization. The value of the goods and space is not reimbursable either as a direct or indirect cost.

(2) The value of the donations may be used to meet cost sharing or matching share requirements under the conditions described in 2 CFR part 215 (OMB Circular A-110). Where donations are treated as indirect costs, indirect cost rates will separate the value of the donations so that reimbursement will not be made.

13. Employee morale, health, and welfare costs.

a. The costs of employee information publications, health or first-aid clinics and/or infirmaries, recreational activities, employee counseling services, and any other expenses incurred in accordance with the non-profit organization's established practice or custom for the improvement of working conditions, employer-employee relations, employee morale, and employee performance are allowable.

b. Such costs will be equitably apportioned to all activities of the non-profit organization. Income generated from any of these activities will be credited to the cost thereof unless such income has been irrevocably set over to employee welfare organizations.

14. Entertainment costs. Costs of entertainment, including amusement, diversion, and social activities and any costs directly associated with such costs (such as tickets to shows or sports events, meals, lodging, rentals, transportation, and gratuities) are unallowable.

15. Equipment and other capital expenditures.

a. For purposes of this subparagraph, the following definitions apply:

(1) "Capital Expenditures" means expenditures for the acquisition cost of capital assets (equipment, buildings, land), or expenditures to make improvements to capital assets that

materially increase their value or useful life. Acquisition cost means the cost of the asset including the cost to put it in place. Acquisition cost for equipment, for example, means the net invoice price of the equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Ancillary charges, such as taxes, duty, protective in transit insurance, freight, and installation may be included in, or excluded from the acquisition cost in accordance with the non-profit organization's regular accounting practices.

(2) "Equipment" means an article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals or exceeds the lesser of the capitalization level established by the non-profit organization for financial statement purposes, or \$5000.

(3) "Special purpose equipment" means equipment which is used only for research, medical, scientific, or other technical activities. Examples of special purpose equipment include microscopes, x-ray machines, surgical instruments, and spectrometers.

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

b. The following rules of allowability shall apply to equipment and other capital expenditures:

(1) Capital expenditures for general purpose equipment, buildings, and land are unallowable as direct charges, except where approved in advance by the awarding agency.

(2) Capital expenditures for special purpose equipment are allowable as direct costs, provided that items with a unit cost of \$5000 or more have the prior approval of the awarding agency.

(3) Capital expenditures for improvements to land, buildings, or equipment which materially increase their value or useful life are unallowable as a direct cost except with the prior approval of the awarding agency.

(4) When approved as a direct charge pursuant to paragraph 15.b.(1), (2), and (3) above, capital expenditures will be charged in the period in which the expenditure is incurred, or as otherwise determined appropriate by and negotiated with the awarding agency.

(5) Equipment and other capital expenditures are unallowable as indirect costs. However, see paragraph 11., Depreciation and use allowance, of this appendix for rules on the allowability of use allowances or depreciation on buildings, capital improvements, and

equipment. Also, see paragraph 43., Rental costs of buildings and equipment, of this appendix for rules on the allowability of rental costs for land, buildings, and equipment.

(6) The unamortized portion of any equipment written off as a result of a change in capitalization levels may be recovered by continuing to claim the otherwise allowable use allowances or depreciation on the equipment, or by amortizing the amount to be written off over a period of years negotiated with the cognizant agency.

16. Fines and penalties. Costs of fines and penalties resulting from violations of, or failure of the organization to comply with Federal, State, and local laws and regulations are unallowable except when incurred as a result of compliance with specific provisions of an award or instructions in writing from the awarding agency.

17. Fund raising and investment management costs. a. Costs of organized fund raising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred solely to raise capital or obtain contributions are unallowable.

b. Costs of investment counsel and staff and similar expenses incurred solely to enhance income from investments are unallowable.

c. Fund raising and investment activities shall be allocated an appropriate share of indirect costs under the conditions described in subparagraph B.3 of Appendix A to this part.

18. Gains and losses on depreciable assets. a. (1) Gains and losses on sale, retirement, or other disposition of depreciable property shall be included in the year in which they occur as credits or charges to cost grouping(s) in which the depreciation applicable to such property was included. The amount of the gain or loss to be included as a credit or charge to the appropriate cost grouping(s) shall be the difference between the amount realized on the property and the undepreciated basis of the property.

(2) Gains and losses on the disposition of depreciable property shall not be recognized as a separate credit or charge under the following conditions:

(a) The gain or loss is processed through a depreciation account and is reflected in the depreciation allowable under paragraph 11 of this appendix.

(b) The property is given in exchange as part of the purchase price of a similar item and the gain or loss is taken into account in determining the depreciation cost basis of the new item.

(c) A loss results from the failure to maintain permissible insurance, except as otherwise provided in paragraph 22 of this appendix.

(d) Compensation for the use of the property was provided through use allowances in lieu of depreciation in accordance with paragraph 9 of this appendix.

(e) Gains and losses arising from mass or extraordinary sales, retirements, or other dispositions shall be considered on a case-by-case basis.

b. Gains or losses of any nature arising from the sale or exchange of property other than the property covered in subparagraph a shall be excluded in computing award costs.

19. Goods or services for personal use. Costs of goods or services for personal use of the organization's employees are unallowable regardless of whether the cost is reported as taxable income to the employees.

20. Housing and personal living expenses. a. Costs of housing (*e.g.* , depreciation, maintenance, utilities, furnishings, rent, etc.), housing allowances and personal living expenses for/of the organization's officers are unallowable as fringe benefit or indirect costs regardless of whether the cost is reported as taxable income to the employees. These costs are allowable as direct costs to sponsored award when necessary for the performance of the sponsored award and approved by awarding agencies.

b. The term “officers” includes current and past officers and employees.

21. Idle facilities and idle capacity. a. As used in this section the following terms have the meanings set forth below:

(1) “Facilities” means land and buildings or any portion thereof, equipment individually or collectively, or any other tangible capital asset, wherever located, and whether owned or leased by the non-profit organization.

(2) “Idle facilities” means completely unused facilities that are excess to the non-profit organization's current needs.

(3) “Idle capacity” means the unused capacity of partially used facilities. It is the difference between: That which a facility could achieve under 100 percent operating time on a one-shift basis less operating interruptions resulting from time lost for repairs, setups, unsatisfactory materials, and other normal delays; and the extent to which the facility was actually used to meet demands during the accounting period. A multi-shift basis should be used if it can be shown that this amount of usage would normally be expected for the type of facility involved.

(4) “Cost of idle facilities or idle capacity” means costs such as maintenance, repair, housing, rent, and other related costs, *e.g.* , insurance, interest, property taxes and depreciation or use allowances.

b. The costs of idle facilities are unallowable except to the extent that:

(1) They are necessary to meet fluctuations in workload; or

(2) Although not necessary to meet fluctuations in workload, they were necessary when acquired and are now idle because of changes in program requirements, efforts to achieve more economical operations, reorganization, termination, or other causes which could not have been reasonably foreseen. Under the exception stated in this subparagraph, costs of idle facilities are allowable for a reasonable period of time, ordinarily not to exceed one year, depending on the initiative taken to use, lease, or dispose of such facilities.

c. The costs of idle capacity are normal costs of doing business and are a factor in the normal fluctuations of usage or indirect cost rates from period to period. Such costs are allowable, provided that the capacity is reasonably anticipated to be necessary or was originally reasonable and is not subject to reduction or elimination by use on other Federal awards, subletting, renting, or sale, in accordance with sound business, economic, or security practices. Widespread idle capacity throughout an entire facility or among a group of assets having substantially the same function may be considered idle facilities.

22. Insurance and indemnification. a. Insurance includes insurance which the organization is required to carry, or which is approved, under the terms of the award and any other insurance which the organization maintains in connection with the general conduct of its operations. This paragraph does not apply to insurance which represents fringe benefits for employees (see subparagraphs 8.g and 8.i(2) of this appendix).

(1) Costs of insurance required or approved, and maintained, pursuant to the award are allowable.

(2) Costs of other insurance maintained by the organization in connection with the general conduct of its operations are allowable subject to the following limitations:

(a) Types and extent of coverage shall be in accordance with sound business practice and the rates and premiums shall be reasonable under the circumstances.

(b) Costs allowed for business interruption or other similar insurance shall be limited to exclude coverage of management fees.

(c) Costs of insurance or of any provisions for a reserve covering the risk of loss or damage to Federal property are allowable only to the extent that the organization is liable for such loss or damage.

(d) Provisions for a reserve under a self-insurance program are allowable to the extent that types of coverage, extent of coverage, rates, and premiums would have been allowed had insurance been purchased to cover the risks. However, provision for known or reasonably estimated self-insured liabilities, which do not become payable for more than one year after the provision is made, shall not exceed the present value of the liability.

(e) Costs of insurance on the lives of trustees, officers, or other employees holding positions of similar responsibilities are allowable only to the extent that the insurance

represents additional compensation (see subparagraph 8.g(4) of this appendix). The cost of such insurance when the organization is identified as the beneficiary is unallowable.

(f) Insurance against defects. Costs of insurance with respect to any costs incurred to correct defects in the organization's materials or workmanship are unallowable.

(g) Medical liability (malpractice) insurance. Medical liability insurance is an allowable cost of Federal research programs only to the extent that the Federal research programs involve human subjects or training of participants in research techniques. Medical liability insurance costs shall be treated as a direct cost and shall be assigned to individual projects based on the manner in which the insurer allocates the risk to the population covered by the insurance.

(3) Actual losses which could have been covered by permissible insurance (through the purchase of insurance or a self-insurance program) are unallowable unless expressly provided for in the award, except:

(a) Costs incurred because of losses not covered under nominal deductible insurance coverage provided in keeping with sound business practice are allowable.

(b) Minor losses not covered by insurance, such as spoilage, breakage, and disappearance of supplies, which occur in the ordinary course of operations, are allowable.

b. Indemnification includes securing the organization against liabilities to third persons and any other loss or damage, not compensated by insurance or otherwise. The Federal Government is obligated to indemnify the organization only to the extent expressly provided in the award.

23. Interest. a. Costs incurred for interest on borrowed capital, temporary use of endowment funds, or the use of the non-profit organization's own funds, however represented, are unallowable. However, interest on debt incurred after September 29, 1995 to acquire or replace capital assets (including renovations, alterations, equipment, land, and capital assets acquired through capital leases), acquired after September 29, 1995 and used in support of Federal awards is allowable, provided that:

(1) For facilities acquisitions (excluding renovations and alterations) costing over \$10 million where the Federal Government's reimbursement is expected to equal or exceed 40 percent of an asset's cost, the non-profit organization prepares, prior to the acquisition or replacement of the capital asset(s), a justification that demonstrates the need for the facility in the conduct of federally-sponsored activities. Upon request, the needs justification must be provided to the Federal agency with cost cognizance authority as a prerequisite to the continued allowability of interest on debt and depreciation related to the facility. The needs justification for the acquisition of a facility should include, at a minimum, the following:

(a) A statement of purpose and justification for facility acquisition or replacement.

- (b) A statement as to why current facilities are not adequate.
- (c) A statement of planned future use of the facility.
- (d) A description of the financing agreement to be arranged for the facility.
- (e) A summary of the building contract with estimated cost information and statement of source and use of funds.
- (f) A schedule of planned occupancy dates.

(2) For facilities costing over \$500,000, the non-profit organization prepares, prior to the acquisition or replacement of the facility, a lease/purchase analysis in accordance with the provisions of §§215.30 through 215.37 of 2 CFR 215 (OMB Circular A-110), which shows that a financed purchase or capital lease is less costly to the organization than other leasing alternatives, on a net present value basis. Discount rates used should be equal to the non-profit organization's anticipated interest rates and should be no higher than the fair market rate available to the non-profit organization from an unrelated ("arm's length") third-party. The lease/purchase analysis shall include a comparison of the net present value of the projected total cost comparisons of both alternatives over the period the asset is expected to be used by the non-profit organization. The cost comparisons associated with purchasing the facility shall include the estimated purchase price, anticipated operating and maintenance costs (including property taxes, if applicable) not included in the debt financing, less any estimated asset salvage value at the end of the period defined above. The cost comparison for a capital lease shall include the estimated total lease payments, any estimated bargain purchase option, operating and maintenance costs, and taxes not included in the capital leasing arrangement, less any estimated credits due under the lease at the end of the period defined above. Projected operating lease costs shall be based on the anticipated cost of leasing comparable facilities at fair market rates under rental agreements that would be renewed or reestablished over the period defined above, and any expected maintenance costs and allowable property taxes to be borne by the non-profit organization directly or as part of the lease arrangement.

(3) The actual interest cost claimed is predicated upon interest rates that are no higher than the fair market rate available to the non-profit organization from an unrelated ("arm's length") third party.

(4) Investment earnings, including interest income, on bond or loan principal, pending payment of the construction or acquisition costs, are used to offset allowable interest cost. Arbitrage earnings reportable to the Internal Revenue Service are not required to be offset against allowable interest costs.

(5) Reimbursements are limited to the least costly alternative based on the total cost analysis required under subparagraph 23.b. of this appendix. For example, if an operating lease is determined to be less costly than purchasing through debt financing, then

reimbursement is limited to the amount determined if leasing had been used. In all cases where a lease/purchase analysis is performed, Federal reimbursement shall be based upon the least expensive alternative.

(6) Non-profit organizations are also subject to the following conditions:

(a) Interest on debt incurred to finance or refinance assets acquired before or reacquired after September 29, 1995, is not allowable.

(b) Interest attributable to fully depreciated assets is unallowable.

(c) For debt arrangements over \$1 million, unless the non-profit organization makes an initial equity contribution to the asset purchase of 25 percent or more, non-profit organizations shall reduce claims for interest expense by an amount equal to imputed interest earnings on excess cash flow, which is to be calculated as follows. Annually, non-profit organizations shall prepare a cumulative (from the inception of the project) report of monthly cash flows that includes inflows and outflows, regardless of the funding source. Inflows consist of depreciation expense, amortization of capitalized construction interest, and annual interest expense. For cash flow calculations, the annual inflow figures shall be divided by the number of months in the year (usually 12) that the building is in service for monthly amounts. Outflows consist of initial equity contributions, debt principal payments (less the pro rata share attributable to the unallowable costs of land) and interest payments. Where cumulative inflows exceed cumulative outflows, interest shall be calculated on the excess inflows for that period and be treated as a reduction to allowable interest expense. The rate of interest to be used to compute earnings on excess cash flows shall be the three month Treasury Bill closing rate as of the last business day of that month.

(d) Substantial relocation of federally-sponsored activities from a facility financed by indebtedness, the cost of which was funded in whole or part through Federal reimbursements, to another facility prior to the expiration of a period of 20 years requires notice to the Federal cognizant agency. The extent of the relocation, the amount of the Federal participation in the financing, and the depreciation and interest charged to date may require negotiation and/or downward adjustments of replacement space charged to Federal programs in the future.

(e) The allowable costs to acquire facilities and equipment are limited to a fair market value available to the non-profit organization from an unrelated (“arm's length”) third party.

b. For non-profit organizations subject to “full coverage” under the Cost Accounting Standards (CAS) as defined at 48 CFR 9903.201, the interest allowability provisions of subparagraph a do not apply. Instead, these organizations' sponsored agreements are subject to CAS 414 (48 CFR 9903.414), cost of money as an element of the cost of facilities capital, and CAS 417 (48 CFR 9903.417), cost of money as an element of the cost of capital assets under construction.

c. The following definitions are to be used for purposes of this paragraph:

(1) Re-acquired assets means assets held by the non-profit organization prior to September 29, 1995 that have again come to be held by the organization, whether through repurchase or refinancing. It does not include assets acquired to replace older assets.

(2) Initial equity contribution means the amount or value of contributions made by non-profit organizations for the acquisition of the asset or prior to occupancy of facilities.

(3) Asset costs means the capitalizable costs of an asset, including construction costs, acquisition costs, and other such costs capitalized in accordance with GAAP.

24. Labor relations costs. Costs incurred in maintaining satisfactory relations between the organization and its employees, including costs of labor management committees, employee publications, and other related activities are allowable.

25. Lobbying. a. Notwithstanding other provisions of this appendix, costs associated with the following activities are unallowable:

(1) Attempts to influence the outcomes of any Federal, State, or local election, referendum, initiative, or similar procedure, through in kind or cash contributions, endorsements, publicity, or similar activity;

(2) Establishing, administering, contributing to, or paying the expenses of a political party, campaign, political action committee, or other organization established for the purpose of influencing the outcomes of elections;

(3) Any attempt to influence: The introduction of Federal or State legislation; or the enactment or modification of any pending Federal or State legislation through communication with any member or employee of the Congress or State legislature (including efforts to influence State or local officials to engage in similar lobbying activity), or with any Government official or employee in connection with a decision to sign or veto enrolled legislation;

(4) Any attempt to influence: The introduction of Federal or State legislation; or the enactment or modification of any pending Federal or State legislation by preparing, distributing or using publicity or propaganda, or by urging members of the general public or any segment thereof to contribute to or participate in any mass demonstration, march, rally, fundraising drive, lobbying campaign or letter writing or telephone campaign; or

(5) Legislative liaison activities, including attendance at legislative sessions or committee hearings, gathering information regarding legislation, and analyzing the effect of legislation, when such activities are carried on in support of or in knowing preparation for an effort to engage in unallowable lobbying.

b. The following activities are excepted from the coverage of subparagraph 25.a of this appendix:

(1) Providing a technical and factual presentation of information on a topic directly related to the performance of a grant, contract or other agreement through hearing testimony, statements or letters to the Congress or a State legislature, or subdivision, member, or cognizant staff member thereof, in response to a documented request (including a Congressional Record notice requesting testimony or statements for the record at a regularly scheduled hearing) made by the recipient member, legislative body or subdivision, or a cognizant staff member thereof; provided such information is readily obtainable and can be readily put in deliverable form; and further provided that costs under this section for travel, lodging or meals are unallowable unless incurred to offer testimony at a regularly scheduled Congressional hearing pursuant to a written request for such presentation made by the Chairman or Ranking Minority Member of the Committee or Subcommittee conducting such hearing.

(2) Any lobbying made unallowable by subparagraph 25.a.(3) of this appendix to influence State legislation in order to directly reduce the cost, or to avoid material impairment of the organization's authority to perform the grant, contract, or other agreement.

(3) Any activity specifically authorized by statute to be undertaken with funds from the grant, contract, or other agreement.

c. (1) When an organization seeks reimbursement for indirect costs, total lobbying costs shall be separately identified in the indirect cost rate proposal, and thereafter treated as other unallowable activity costs in accordance with the procedures of subparagraph B.3 of Appendix A to this part.

(2) Organizations shall submit, as part of the annual indirect cost rate proposal, a certification that the requirements and standards of this paragraph have been complied with.

(3) Organizations shall maintain adequate records to demonstrate that the determination of costs as being allowable or unallowable pursuant to paragraph 25 complies with the requirements of this Appendix.

(4) Time logs, calendars, or similar records shall not be required to be created for purposes of complying with this paragraph during any particular calendar month when: the employee engages in lobbying (as defined in subparagraphs 25.a. and b. of this appendix) 25 percent or less of the employee's compensated hours of employment during that calendar month, and within the preceding five-year period, the organization has not materially misstated allowable or unallowable costs of any nature, including legislative lobbying costs. When the conditions described in this subparagraph are met, organizations are not required to establish records to support the allowability of claimed costs in addition to records already required or maintained. Also, when the conditions

described in this subparagraph are met, the absence of time logs, calendars, or similar records will not serve as a basis for disallowing costs by contesting estimates of lobbying time spent by employees during a calendar month.

(5) Agencies shall establish procedures for resolving in advance, in consultation with OMB, any significant questions or disagreements concerning the interpretation or application of paragraph 25. Any such advance resolution shall be binding in any subsequent settlements, audits or investigations with respect to that grant or contract for purposes of interpretation of this Appendix; provided, however, that this shall not be construed to prevent a contractor or grantee from contesting the lawfulness of such a determination.

d. Executive lobbying costs. Costs incurred in attempting to improperly influence either directly or indirectly, an employee or officer of the Executive Branch of the Federal Government to give consideration or to act regarding a sponsored agreement or a regulatory matter are unallowable. Improper influence means any influence that induces or tends to induce a Federal employee or officer to give consideration or to act regarding a federally-sponsored agreement or regulatory matter on any basis other than the merits of the matter.

26. Losses on other sponsored agreements or contracts. Any excess of costs over income on any award is unallowable as a cost of any other award. This includes, but is not limited to, the organization's contributed portion by reason of cost sharing agreements or any under-recoveries through negotiation of lump sums for, or ceilings on, indirect costs.

27. Maintenance and repair costs. Costs incurred for necessary maintenance, repair, or upkeep of buildings and equipment (including Federal property unless otherwise provided for) which neither add to the permanent value of the property nor appreciably prolong its intended life, but keep it in an efficient operating condition, are allowable. Costs incurred for improvements which add to the permanent value of the buildings and equipment or appreciably prolong their intended life shall be treated as capital expenditures (see paragraph 15 of this appendix).

28. Materials and supplies costs. a. Costs incurred for materials, supplies, and fabricated parts necessary to carry out a Federal award are allowable.

b. Purchased materials and supplies shall be charged at their actual prices, net of applicable credits. Withdrawals from general stores or stockrooms should be charged at their actual net cost under any recognized method of pricing inventory withdrawals, consistently applied. Incoming transportation charges are a proper part of materials and supplies costs.

c. Only materials and supplies actually used for the performance of a Federal award may be charged as direct costs.

d. Where federally-donated or furnished materials are used in performing the Federal award, such materials will be used without charge.

29. Meetings and conferences. Costs of meetings and conferences, the primary purpose of which is the dissemination of technical information, are allowable. This includes costs of meals, transportation, rental of facilities, speakers' fees, and other items incidental to such meetings or conferences. But see paragraphs 14., Entertainment costs, and 33., Participant support costs of this appendix.

30. Memberships, subscriptions, and professional activity costs. a. Costs of the non-profit organization's membership in business, technical, and professional organizations are allowable.

b. Costs of the non-profit organization's subscriptions to business, professional, and technical periodicals are allowable.

c. Costs of membership in any civic or community organization are allowable with prior approval by Federal cognizant agency.

d. Costs of membership in any country club or social or dining club or organization are unallowable.

31. Organization costs. Expenditures, such as incorporation fees, brokers' fees, fees to promoters, organizers or management consultants, attorneys, accountants, or investment counselors, whether or not employees of the organization, in connection with establishment or reorganization of an organization, are unallowable except with prior approval of the awarding agency.

32. Page charges in professional journals. Page charges for professional journal publications are allowable as a necessary part of research costs, where:

a. The research papers report work supported by the Federal Government; and

b. The charges are levied impartially on all research papers published by the journal, whether or not by federally-sponsored authors.

33. Participant support costs. Participant support costs are direct costs for items such as stipends or subsistence allowances, travel allowances, and registration fees paid to or on behalf of participants or trainees (but not employees) in connection with meetings, conferences, symposia, or training projects. These costs are allowable with the prior approval of the awarding agency.

34. Patent costs. a. The following costs relating to patent and copyright matters are allowable: cost of preparing disclosures, reports, and other documents required by the Federal award and of searching the art to the extent necessary to make such disclosures; cost of preparing documents and any other patent costs in connection with the filing and

prosecution of a United States patent application where title or royalty-free license is required by the Federal Government to be conveyed to the Federal Government; and general counseling services relating to patent and copyright matters, such as advice on patent and copyright laws, regulations, clauses, and employee agreements (but see paragraphs 37., Professional services costs, and 44., Royalties and other costs for use of patents and copyrights, of this appendix).

b. The following costs related to patent and copyright matter are unallowable:

(1) Cost of preparing disclosures, reports, and other documents and of searching the art to the extent necessary to make disclosures not required by the award.

(2) Costs in connection with filing and prosecuting any foreign patent application, or any United States patent application, where the Federal award does not require conveying title or a royalty-free license to the Federal Government (but see paragraph 45., Royalties and other costs for use of patents and copyrights, of this appendix).

35. Plant and homeland security costs. Necessary and reasonable expenses incurred for routine and homeland security to protect facilities, personnel, and work products are allowable. Such costs include, but are not limited to, wages and uniforms of personnel engaged in security activities; equipment; barriers; contractual security services; consultants; etc. Capital expenditures for homeland and plant security purposes are subject to paragraph 15., Equipment and other capital expenditures, of this appendix.

36. Pre-agreement costs. Pre-award costs are those incurred prior to the effective date of the award directly pursuant to the negotiation and in anticipation of the award where such costs are necessary to comply with the proposed delivery schedule or period of performance. Such costs are allowable only to the extent that they would have been allowable if incurred after the date of the award and only with the written approval of the awarding agency.

37. Professional services costs. a. Costs of professional and consultant services rendered by persons who are members of a particular profession or possess a special skill, and who are not officers or employees of the non-profit organization, are allowable, subject to subparagraphs b and c when reasonable in relation to the services rendered and when not contingent upon recovery of the costs from the Federal Government. In addition, legal and related services are limited under paragraph 10 of this appendix.

b. In determining the allowability of costs in a particular case, no single factor or any special combination of factors is necessarily determinative. However, the following factors are relevant:

(1) The nature and scope of the service rendered in relation to the service required.

(2) The necessity of contracting for the service, considering the non-profit organization's capability in the particular area.

- (3) The past pattern of such costs, particularly in the years prior to Federal awards.
- (4) The impact of Federal awards on the non-profit organization's business (*i.e.* , what new problems have arisen).
- (5) Whether the proportion of Federal work to the non-profit organization's total business is such as to influence the non-profit organization in favor of incurring the cost, particularly where the services rendered are not of a continuing nature and have little relationship to work under Federal grants and contracts.
- (6) Whether the service can be performed more economically by direct employment rather than contracting.
- (7) The qualifications of the individual or concern rendering the service and the customary fees charged, especially on non-Federal awards.
- (8) Adequacy of the contractual agreement for the service (*e.g.* , description of the service, estimate of time required, rate of compensation, and termination provisions).

c. In addition to the factors in subparagraph 37.b of this appendix, retainer fees to be allowable must be supported by evidence of bona fide services available or rendered

38. Publication and printing costs. a. Publication costs include the costs of printing (including the processes of composition, plate-making, press work, binding, and the end products produced by such processes), distribution, promotion, mailing, and general handling. Publication costs also include page charges in professional publications.

b. If these costs are not identifiable with a particular cost objective, they should be allocated as indirect costs to all benefiting activities of the non-profit organization.

c. Page charges for professional journal publications are allowable as a necessary part of research costs where:

- (1) The research papers report work supported by the Federal Government: and
- (2) The charges are levied impartially on all research papers published by the journal, whether or not by federally-sponsored authors.

39. Rearrangement and alteration costs. Costs incurred for ordinary or normal rearrangement and alteration of facilities are allowable. Special arrangement and alteration costs incurred specifically for the project are allowable with the prior approval of the awarding agency.

40. Reconversion costs. Costs incurred in the restoration or rehabilitation of the non-profit organization's facilities to approximately the same condition existing immediately

prior to commencement of Federal awards, less costs related to normal wear and tear, are allowable.

41. Recruiting costs. a. Subject to subparagraphs 41.b, c, and d of this appendix, and provided that the size of the staff recruited and maintained is in keeping with workload requirements, costs of “help wanted” advertising, operating costs of an employment office necessary to secure and maintain an adequate staff, costs of operating an aptitude and educational testing program, travel costs of employees while engaged in recruiting personnel, travel costs of applicants for interviews for prospective employment, and relocation costs incurred incident to recruitment of new employees, are allowable to the extent that such costs are incurred pursuant to a well-managed recruitment program. Where the organization uses employment agencies, costs that are not in excess of standard commercial rates for such services are allowable.

b. In publications, costs of help wanted advertising that includes color, includes advertising material for other than recruitment purposes, or is excessive in size (taking into consideration recruitment purposes for which intended and normal organizational practices in this respect), are unallowable.

c. Costs of help wanted advertising, special emoluments, fringe benefits, and salary allowances incurred to attract professional personnel from other organizations that do not meet the test of reasonableness or do not conform with the established practices of the organization, are unallowable.

d. Where relocation costs incurred incident to recruitment of a new employee have been allowed either as an allocable direct or indirect cost, and the newly hired employee resigns for reasons within his control within twelve months after being hired, the organization will be required to refund or credit such relocation costs to the Federal Government.

42. Relocation costs. a. Relocation costs are costs incident to the permanent change of duty assignment (for an indefinite period or for a stated period of not less than 12 months) of an existing employee or upon recruitment of a new employee. Relocation costs are allowable, subject to the limitation described in subparagraphs 42.b, c, and d of this appendix, provided that:

(1) The move is for the benefit of the employer.

(2) Reimbursement to the employee is in accordance with an established written policy consistently followed by the employer.

(3) The reimbursement does not exceed the employee's actual (or reasonably estimated) expenses.

b. Allowable relocation costs for current employees are limited to the following:

(1) The costs of transportation of the employee, members of his immediate family and his household, and personal effects to the new location.

(2) The costs of finding a new home, such as advance trips by employees and spouses to locate living quarters and temporary lodging during the transition period, up to maximum period of 30 days, including advance trip time.

(3) Closing costs, such as brokerage, legal, and appraisal fees, incident to the disposition of the employee's former home. These costs, together with those described in subparagraph 42.b.(4) of this appendix, are limited to 8 percent of the sales price of the employee's former home.

(4) The continuing costs of ownership of the vacant former home after the settlement or lease date of the employee's new permanent home, such as maintenance of buildings and grounds (exclusive of fixing up expenses), utilities, taxes, and property insurance.

(5) Other necessary and reasonable expenses normally incident to relocation, such as the costs of canceling an unexpired lease, disconnecting and reinstalling household appliances, and purchasing insurance against loss of or damages to personal property. The cost of canceling an unexpired lease is limited to three times the monthly rental.

c. Allowable relocation costs for new employees are limited to those described in subparagraph 42.b(1) and (2) of this appendix. When relocation costs incurred incident to the recruitment of new employees have been allowed either as a direct or indirect cost and the employee resigns for reasons within his control within 12 months after hire, the organization shall refund or credit the Federal Government for its share of the cost. However, the costs of travel to an overseas location shall be considered travel costs in accordance with paragraph 50 and not relocation costs for the purpose of this paragraph if dependents are not permitted at the location for any reason and the costs do not include costs of transporting household goods.

d. The following costs related to relocation are unallowable:

(1) Fees and other costs associated with acquiring a new home.

(2) A loss on the sale of a former home.

(3) Continuing mortgage principal and interest payments on a home being sold.

(4) Income taxes paid by an employee related to reimbursed relocation costs.

43. Rental costs of buildings and equipment. a. Subject to the limitations described in subparagraphs 43.b. through d. of this appendix, rental costs are allowable to the extent that the rates are reasonable in light of such factors as: Rental costs of comparable property, if any; market conditions in the area; alternatives available; and, the type, life expectancy, condition, and value of the property leased. Rental arrangements should be

reviewed periodically to determine if circumstances have changed and other options are available.

b. Rental costs under “sale and lease back” arrangements are allowable only up to the amount that would be allowed had the non-profit organization continued to own the property. This amount would include expenses such as depreciation or use allowance, maintenance, taxes, and insurance.

c. Rental costs under “less-than-arms-length” leases are allowable only up to the amount (as explained in subparagraph 43.b. of this appendix) that would be allowed had title to the property vested in the non-profit organization. For this purpose, a less-than-arms-length lease is one under which one party to the lease agreement is able to control or substantially influence the actions of the other. Such leases include, but are not limited to those between divisions of a non-profit organization; non-profit organizations under common control through common officers, directors, or members; and a non-profit organization and a director, trustee, officer, or key employee of the non-profit organization or his immediate family, either directly or through corporations, trusts, or similar arrangements in which they hold a controlling interest. For example, a non-profit organization may establish a separate corporation for the sole purpose of owning property and leasing it back to the non-profit organization.

d. Rental costs under leases which are required to be treated as capital leases under GAAP are allowable only up to the amount (as explained in subparagraph b) that would be allowed had the non-profit organization purchased the property on the date the lease agreement was executed. The provisions of Financial Accounting Standards Board Statement 13, Accounting for Leases, shall be used to determine whether a lease is a capital lease. Interest costs related to capital leases are allowable to the extent they meet the criteria in paragraph 23 of this appendix. Unallowable costs include amounts paid for profit, management fees, and taxes that would not have been incurred had the non-profit organization purchased the facility.

44. Royalties and other costs for use of patents and copyrights. a. Royalties on a patent or copyright or amortization of the cost of acquiring by purchase a copyright, patent, or rights thereto, necessary for the proper performance of the award are allowable unless:

(1) The Federal Government has a license or the right to free use of the patent or copyright.

(2) The patent or copyright has been adjudicated to be invalid, or has been administratively determined to be invalid.

(3) The patent or copyright is considered to be unenforceable.

(4) The patent or copyright is expired.

b. Special care should be exercised in determining reasonableness where the royalties may have arrived at as a result of less-than-arm's-length bargaining, *e.g.*:

- (1) Royalties paid to persons, including corporations, affiliated with the non-profit organization.
- (2) Royalties paid to unaffiliated parties, including corporations, under an agreement entered into in contemplation that a Federal award would be made.
- (3) Royalties paid under an agreement entered into after an award is made to a non-profit organization.

c. In any case involving a patent or copyright formerly owned by the non-profit organization, the amount of royalty allowed should not exceed the cost which would have been allowed had the non-profit organization retained title thereto.

45. Selling and marketing. Costs of selling and marketing any products or services of the non-profit organization are unallowable (unless allowed under paragraph 1. of this appendix as allowable public relations cost. However, these costs are allowable as direct costs, with prior approval by awarding agencies, when they are necessary for the performance of Federal programs.

46. Specialized service facilities. a. The costs of services provided by highly complex or specialized facilities operated by the non-profit organization, such as computers, wind tunnels, and reactors are allowable, provided the charges for the services meet the conditions of either paragraph 46 b. or c. of this appendix and, in addition, take into account any items of income or Federal financing that qualify as applicable credits under subparagraph A.5. of Appendix A to this part.

b. The costs of such services, when material, must be charged directly to applicable awards based on actual usage of the services on the basis of a schedule of rates or established methodology that does not discriminate against federally-supported activities of the non-profit organization, including usage by the non-profit organization for internal purposes, and is designed to recover only the aggregate costs of the services. The costs of each service shall consist normally of both its direct costs and its allocable share of all indirect costs. Rates shall be adjusted at least biennially, and shall take into consideration over/under applied costs of the previous period(s).

c. Where the costs incurred for a service are not material, they may be allocated as indirect costs.

d. Under some extraordinary circumstances, where it is in the best interest of the Federal Government and the institution to establish alternative costing arrangements, such arrangements may be worked out with the cognizant Federal agency.

47. Taxes. a. In general, taxes which the organization is required to pay and which are paid or accrued in accordance with GAAP, and payments made to local governments in lieu of taxes which are commensurate with the local government services received are allowable, except for taxes from which exemptions are available to the organization directly or which are available to the organization based on an exemption afforded the Federal Government and in the latter case when the awarding agency makes available the necessary exemption certificates, special assessments on land which represent capital improvements, and Federal income taxes.

b. Any refund of taxes, and any payment to the organization of interest thereon, which were allowed as award costs, will be credited either as a cost reduction or cash refund, as appropriate, to the Federal Government.

48. Termination costs applicable to sponsored agreements. Termination of awards generally gives rise to the incurrence of costs, or the need for special treatment of costs, which would not have arisen had the Federal award not been terminated. Cost principles covering these items are set forth below. They are to be used in conjunction with the other provisions of this appendix in termination situations.

a. The cost of items reasonably usable on the non-profit organization's other work shall not be allowable unless the non-profit organization submits evidence that it would not retain such items at cost without sustaining a loss. In deciding whether such items are reasonably usable on other work of the non-profit organization, the awarding agency should consider the non-profit organization's plans and orders for current and scheduled activity. Contemporaneous purchases of common items by the non-profit organization shall be regarded as evidence that such items are reasonably usable on the non-profit organization's other work. Any acceptance of common items as allocable to the terminated portion of the Federal award shall be limited to the extent that the quantities of such items on hand, in transit, and on order are in excess of the reasonable quantitative requirements of other work.

b. If in a particular case, despite all reasonable efforts by the non-profit organization, certain costs cannot be discontinued immediately after the effective date of termination, such costs are generally allowable within the limitations set forth in this appendix, except that any such costs continuing after termination due to the negligent or willful failure of the non-profit organization to discontinue such costs shall be unallowable.

c. Loss of useful value of special tooling, machinery, and is generally allowable if:

(1) Such special tooling, special machinery, or equipment is not reasonably capable of use in the other work of the non-profit organization,

(2) The interest of the Federal Government is protected by transfer of title or by other means deemed appropriate by the awarding agency, and

(3) The loss of useful value for any one terminated Federal award is limited to that portion of the acquisition cost which bears the same ratio to the total acquisition cost as the terminated portion of the Federal award bears to the entire terminated Federal award and other Federal awards for which the special tooling, special machinery, or equipment was acquired.

d. Rental costs under unexpired leases are generally allowable where clearly shown to have been reasonably necessary for the performance of the terminated Federal award less the residual value of such leases, if:

(1) The amount of such rental claimed does not exceed the reasonable use value of the property leased for the period of the Federal award and such further period as may be reasonable, and

(2) The non-profit organization makes all reasonable efforts to terminate, assign, settle, or otherwise reduce the cost of such lease. There also may be included the cost of alterations of such leased property, provided such alterations were necessary for the performance of the Federal award, and of reasonable restoration required by the provisions of the lease.

e. Settlement expenses including the following are generally allowable:

(1) Accounting, legal, clerical, and similar costs reasonably necessary for:

(a) The preparation and presentation to the awarding agency of settlement claims and supporting data with respect to the terminated portion of the Federal award, unless the termination is for default (see §215.61 of 2 CFR part 215 (OMB Circular A-110)); and

(b) The termination and settlement of subawards.

(2) Reasonable costs for the storage, transportation, protection, and disposition of property provided by the Federal Government or acquired or produced for the Federal award, except when grantees or contractors are reimbursed for disposals at a predetermined amount in accordance with §215.32 through 215.37 of 2 CFR part 215 (OMB Circular A-110).

(3) Indirect costs related to salaries and wages incurred as settlement expenses in subparagraphs 48.e.(1) and (2) of this appendix. Normally, such indirect costs shall be limited to fringe benefits, occupancy cost, and immediate supervision.

f. Claims under sub awards, including the allocable portion of claims which are common to the Federal award, and to other work of the non-profit organization are generally allowable.

An appropriate share of the non-profit organization's indirect expense may be allocated to the amount of settlements with subcontractors and/or subgrantees, provided that the amount allocated is otherwise consistent with the basic guidelines contained in Appendix

A. The indirect expense so allocated shall exclude the same and similar costs claimed directly or indirectly as settlement expenses.

49. Training costs. a. Costs of preparation and maintenance of a program of instruction including but not limited to on-the-job, classroom, and apprenticeship training, designed to increase the vocational effectiveness of employees, including training materials, textbooks, salaries or wages of trainees (excluding overtime compensation which might arise therefrom), and (i) salaries of the director of training and staff when the training program is conducted by the organization; or (ii) tuition and fees when the training is in an institution not operated by the organization, are allowable.

b. Costs of part-time education, at an undergraduate or post-graduate college level, including that provided at the organization's own facilities, are allowable only when the course or degree pursued is relative to the field in which the employee is now working or may reasonably be expected to work, and are limited to:

(1) Training materials.

(2) Textbooks.

(3) Fees charges by the educational institution.

(4) Tuition charged by the educational institution or, in lieu of tuition, instructors' salaries and the related share of indirect costs of the educational institution to the extent that the sum thereof is not in excess of the tuition which would have been paid to the participating educational institution.

(5) Salaries and related costs of instructors who are employees of the organization.

(6) Straight-time compensation of each employee for time spent attending classes during working hours not in excess of 156 hours per year and only to the extent that circumstances do not permit the operation of classes or attendance at classes after regular working hours; otherwise, such compensation is unallowable.

c. Costs of tuition, fees, training materials, and textbooks (but not subsistence, salary, or any other emoluments) in connection with full-time education, including that provided at the organization's own facilities, at a post-graduate (but not undergraduate) college level, are allowable only when the course or degree pursued is related to the field in which the employee is now working or may reasonably be expected to work, and only where the costs receive the prior approval of the awarding agency. Such costs are limited to the costs attributable to a total period not to exceed one school year for each employee so trained. In unusual cases the period may be extended.

d. Costs of attendance of up to 16 weeks per employee per year at specialized programs specifically designed to enhance the effectiveness of executives or managers or to prepare employees for such positions are allowable. Such costs include enrollment fees, training

materials, textbooks and related charges, employees' salaries, subsistence, and travel. Costs allowable under this paragraph do not include those for courses that are part of a degree-oriented curriculum, which are allowable only to the extent set forth in subparagraphs b and c.

e. Maintenance expense, and normal depreciation or fair rental, on facilities owned or leased by the organization for training purposes are allowable to the extent set forth in paragraphs 11, 27, and 50 of this appendix.

f. Contributions or donations to educational or training institutions, including the donation of facilities or other properties, and scholarships or fellowships, are unallowable.

g. Training and education costs in excess of those otherwise allowable under subparagraphs 49.b and c of this appendix may be allowed with prior approval of the awarding agency. To be considered for approval, the organization must demonstrate that such costs are consistently incurred pursuant to an established training and education program, and that the course or degree pursued is relative to the field in which the employee is now working or may reasonably be expected to work.

50. Transportation costs. Transportation costs include freight, express, cartage, and postage charges relating either to goods purchased, in process, or delivered. These costs are allowable. When such costs can readily be identified with the items involved, they may be directly charged as transportation costs or added to the cost of such items (*see* paragraph 28 of this appendix). Where identification with the materials received cannot readily be made, transportation costs may be charged to the appropriate indirect cost accounts if the organization follows a consistent, equitable procedure in this respect.

51. Travel costs.

a. General. Travel costs are the expenses for transportation, lodging, subsistence, and related items incurred by employees who are in travel status on official business of the non-profit organization. Such costs may be charged on an actual cost basis, on a per diem or mileage basis in lieu of actual costs incurred, or on a combination of the two, provided the method used is applied to an entire trip and not to selected days of the trip, and results in charges consistent with those normally allowed in like circumstances in the non-profit organization's non-federally-sponsored activities.

b. Lodging and subsistence. Costs incurred by employees and officers for travel, including costs of lodging, other subsistence, and incidental expenses, shall be considered reasonable and allowable only to the extent such costs do not exceed charges normally allowed by the non-profit organization in its regular operations as the result of the non-profit organization's written travel policy. In the absence of an acceptable, written non-profit organization policy regarding travel costs, the rates and amounts established under subchapter I of Chapter 57, Title 5, United States Code ("Travel and Subsistence Expenses; Mileage Allowances"), or by the Administrator of General Services, or by the

President (or his or her designee) pursuant to any provisions of such subchapter shall apply to travel under Federal awards (48 CFR 31.205–46(a)).

c. Commercial air travel. (1) Airfare costs in excess of the customary standard commercial airfare (coach or equivalent), Federal Government contract airfare (where authorized and available), or the lowest commercial discount airfare are unallowable except when such accommodations would: require circuitous routing; require travel during unreasonable hours; excessively prolong travel; result in additional costs that would offset the transportation savings; or offer accommodations not reasonably adequate for the traveler's medical needs. The non-profit organization must justify and document these conditions on a case-by-case basis in order for the use of first-class airfare to be allowable in such cases.

(2) Unless a pattern of avoidance is detected, the Federal Government will generally not question a non-profit organization's determinations that customary standard airfare or other discount airfare is unavailable for specific trips if the non-profit organization can demonstrate either of the following: that such airfare was not available in the specific case; or that it is the non-profit organization's overall practice to make routine use of such airfare.

d. Air travel by other than commercial carrier. Costs of travel by non-profit organization-owned, -leased, or -chartered aircraft include the cost of lease, charter, operation (including personnel costs), maintenance, depreciation, insurance, and other related costs. The portion of such costs that exceeds the cost of allowable commercial air travel, as provided for in subparagraph] c., is unallowable.

e. Foreign travel. Direct charges for foreign travel costs are allowable only when the travel has received prior approval of the awarding agency. Each separate foreign trip must receive such approval. For purposes of this provision, "foreign travel" includes any travel outside Canada, Mexico, the United States, and any United States territories and possessions. However, the term "foreign travel" for a non-profit organization located in a foreign country means travel outside that country.

52. Trustees. Travel and subsistence costs of trustees (or directors) are allowable. The costs are subject to restrictions regarding lodging, subsistence and air travel costs provided in paragraph 51 of this appendix.

Appendix C to Part 230—Non-Profit Organizations Not Subject to This Part

1. Advance Technology Institute (ATI), Charleston, South Carolina
2. Aerospace Corporation, El Segundo, California
3. American Institutes of Research (AIR), Washington DC
4. Argonne National Laboratory, Chicago, Illinois

5. Atomic Casualty Commission, Washington, DC
6. Battelle Memorial Institute, Headquartered in Columbus, Ohio
7. Brookhaven National Laboratory, Upton, New York
8. Charles Stark Draper Laboratory, Incorporated, Cambridge, Massachusetts
9. CNA Corporation (CNAC), Alexandria, Virginia
10. Environmental Institute of Michigan, Ann Arbor, Michigan
11. Georgia Institute of Technology/Georgia Tech Applied Research Corporation/Georgia Tech Research Institute, Atlanta, Georgia
12. Hanford Environmental Health Foundation, Richland, Washington
13. IIT Research Institute, Chicago, Illinois
14. Institute of Gas Technology, Chicago, Illinois
15. Institute for Defense Analysis, Alexandria, Virginia
16. LMI, McLean, Virginia
17. Mitre Corporation, Bedford, Massachusetts
18. Mitretek Systems, Inc., Falls Church, Virginia
19. National Radiological Astronomy Observatory, Green Bank, West Virginia
20. National Renewable Energy Laboratory, Golden, Colorado
21. Oak Ridge Associated Universities, Oak Ridge, Tennessee
22. Rand Corporation, Santa Monica, California
23. Research Triangle Institute, Research Triangle Park, North Carolina
24. Riverside Research Institute, New York, New York
25. South Carolina Research Authority (SCRA), Charleston, South Carolina
26. Southern Research Institute, Birmingham, Alabama
27. Southwest Research Institute, San Antonio, Texas

28. SRI International, Menlo Park, California
29. Syracuse Research Corporation, Syracuse, New York
30. Universities Research Association, Incorporated (National Acceleration Lab), Argonne, Illinois
31. Urban Institute, Washington DC
32. Non-profit insurance companies, such as Blue Cross and Blue Shield Organizations
33. Other non-profit organizations as negotiated with awarding agencies

Circular No. A-133
Revised to show changes published in the
***Federal Register* June 27, 2003**

Audits of States, Local Governments, and Non-Profit Organizations

Accompanying *Federal Register* Materials:

- Audits of States, Local Governments, and Non-Profit Organizations June 30, 1997
- Revision published June 27, 2003

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

SUBJECT: Audits of States, Local Governments, and Non-Profit Organizations

1. **Purpose.** This Circular is issued pursuant to the Single Audit Act of 1984, P.L. 98-502, and the Single Audit Act Amendments of 1996, P.L. 104-156. It sets forth standards for obtaining consistency and uniformity among Federal agencies for the audit of States, local governments, and non-profit organizations expending Federal awards.

2. **Authority.** Circular A-133 is issued under the authority of sections 503, 1111, and 7501 *et seq.* of title 31, United States Code, and Executive Orders 8248 and 11541.

3. **Rescission and Supersession.** This Circular rescinds Circular A-128, "Audits of State and Local Governments," issued April 12, 1985, and supersedes the prior Circular A-133, "Audits of Institutions of Higher Education and Other Non-Profit Institutions," issued April 22, 1996. For effective dates, see paragraph 10.

4. **Policy.** Except as provided herein, the standards set forth in this Circular shall be applied by all Federal agencies. If any statute specifically prescribes policies or specific requirements that differ from the standards provided herein, the provisions of the subsequent statute shall govern.

Federal agencies shall apply the provisions of the sections of this Circular to non-Federal entities, whether they are recipients expending Federal awards received directly from Federal awarding agencies, or are subrecipients expending Federal awards received from a pass-through entity (a recipient or another subrecipient).

This Circular does not apply to non-U.S. based entities expending Federal awards received either directly as a recipient or indirectly as a subrecipient.

5. **Definitions.** The definitions of key terms used in this Circular are contained in § ____.105 in the Attachment to this Circular.

6. **Required Action.** The specific requirements and responsibilities of Federal agencies and non-Federal entities are set forth in the Attachment to this Circular. Federal agencies

making awards to non-Federal entities, either directly or indirectly, shall adopt the language in the Circular in codified regulations as provided in Section 10 (below), unless different provisions are required by Federal statute or are approved by the Office of Management and Budget (OMB).

7. OMB Responsibilities. OMB will review Federal agency regulations and implementation of this Circular, and will provide interpretations of policy requirements and assistance to ensure uniform, effective and efficient implementation.

8. Information Contact. Further information concerning Circular A-133 may be obtained by contacting the Financial Standards and Reporting Branch, Office of Federal Financial Management, Office of Management and Budget, Washington, DC 20503, telephone (202) 395-3993.

9. Review Date. This Circular will have a policy review three years from the date of issuance.

10. Effective Dates. The standards set forth in §____.400 of the Attachment to this Circular, which apply directly to Federal agencies, shall be effective July 1, 1996, and shall apply to audits of fiscal years beginning after June 30, 1996, except as otherwise specified in §____.400(a).

The standards set forth in this Circular that Federal agencies shall apply to non-Federal entities shall be adopted by Federal agencies in codified regulations not later than 60 days after publication of this final revision in the **Federal Register**, so that they will apply to audits of fiscal years beginning after June 30, 1996, with the exception that §____.305(b) of the Attachment applies to audits of fiscal years beginning after June 30, 1998. The requirements of Circular A-128, although the Circular is rescinded, and the 1990 version of Circular A-133 remain in effect for audits of fiscal years beginning on or before June 30, 1996.

The revisions published in the *Federal Register* June 27, 2003, are effective for fiscal years ending after December 31, 2003, and early implementation is not permitted with the exception of the definition of *oversight agency for audit*, which is effective July 28, 2003.

Augustine T. Smythe
Acting Director

Attachment

PART__ --AUDITS OF STATES, LOCAL GOVERNMENTS, AND NON-PROFIT ORGANIZATIONS

Subpart A--General

Sec.

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Appendix A to Part __ - Data Collection Form (Form SF-SAC).

Appendix B to Part __ - Circular A-133 Compliance Supplement.

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Subpart A--General

§ __.100 Purpose.

This part sets forth standards for obtaining consistency and uniformity among Federal agencies for the audit of non-Federal entities expending Federal awards.

§ __.105 Definitions.

Auditee means any non-Federal entity that expends Federal awards which must be audited under this part. **Auditor** means an auditor, that is a public accountant or a Federal, State or local government audit organization, which meets the general standards specified in generally accepted government auditing standards (GAGAS). The term **auditor** does not include internal auditors of non-profit organizations.

Audit finding means deficiencies which the auditor is required by § __.510(a) to report in the schedule of findings and questioned costs.

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

Cluster of programs means a grouping of closely related programs that share common compliance requirements. The types of clusters of programs are research and development (R&D), student financial aid (SFA), and other clusters. "Other clusters" are as defined by the Office of Management and Budget (OMB) in the compliance supplement or as designated by a State for Federal awards the State provides to its subrecipients that meet the definition of a cluster of programs. When designating an "other cluster," a State shall identify the Federal awards included in the cluster and advise the subrecipients of compliance requirements applicable to the cluster, consistent with § __.400(d)(1) and § __.400(d)(2), respectively. A cluster of programs shall be considered as one program for determining major programs, as described in § __.520, and, with the exception of R&D as described in § __.200(c), whether a program-specific audit may be elected.

Cognizant agency for audit means the Federal agency designated to carry out the responsibilities described in § __.400(a).

Compliance supplement refers to the **Circular A-133 Compliance Supplement**, included as Appendix B to Circular A-133, or such documents as OMB or its designee may issue to replace it. This document is available from the Government Printing Office, Superintendent of Documents, Washington, DC 20402-9325.

Corrective action means action taken by the auditee that:

- (1) Corrects identified deficiencies;
- (2) Produces recommended improvements; or

(3) Demonstrates that audit findings are either invalid or do not warrant auditee action.

Federal agency has the same meaning as the term **agency** in Section 551(1) of title 5, United States Code.

Federal award means Federal financial assistance and Federal cost-reimbursement contracts that non-Federal entities receive directly from Federal awarding agencies or indirectly from pass-through entities. It does not include procurement contracts, under grants or contracts, used to buy goods or services from vendors. Any audits of such vendors shall be covered by the terms and conditions of the contract. Contracts to operate Federal Government owned, contractor operated facilities (GOCOs) are excluded from the requirements of this part.

Federal awarding agency means the Federal agency that provides an award directly to the recipient.

Federal financial assistance means assistance that non-Federal entities receive or administer in the form of grants, loans, loan guarantees, property (including donated surplus property), cooperative agreements, interest subsidies, insurance, food commodities, direct appropriations, and other assistance, but does not include amounts received as reimbursement for services rendered to individuals as described in § __.205(h) and § __.205(i).

Federal program means:

- (1) All Federal awards to a non-Federal entity assigned a single number in the CFDA.
- (2) When no CFDA number is assigned, all Federal awards from the same agency made for the same purpose should be combined and considered one program.
- (3) Notwithstanding paragraphs (1) and (2) of this definition, a cluster of programs. The types of clusters of programs are:
 - (i) Research and development (R&D);
 - (ii) Student financial aid (SFA); and
 - (iii) "Other clusters," as described in the definition of cluster of programs in this section.

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

Generally accepted accounting principles has the meaning specified in generally accepted auditing standards issued by the American Institute of Certified Public Accountants (AICPA).

Indian tribe means any Indian tribe, band, nation, or other organized group or community, including any Alaskan Native village or regional or village corporation (as defined in, or established under, the Alaskan Native Claims Settlement Act) that is recognized by the United States as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Internal control means a process, effected by an entity's management and other personnel, designed to provide reasonable assurance regarding the achievement of objectives in the following categories:

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

Internal control pertaining to the compliance requirements for Federal programs (Internal control over Federal programs) means a process--effected by an entity's management and other personnel--designed to provide reasonable assurance regarding the achievement of the following objectives for Federal programs:

- (1) Transactions are properly recorded and accounted for to:
 - (i) Permit the preparation of reliable financial statements and Federal reports;
 - (ii) Maintain accountability over assets; and
 - (iii) Demonstrate compliance with laws, regulations, and other compliance requirements;
- (2) Transactions are executed in compliance with:
 - (i) Laws, regulations, and the provisions of contracts or grant agreements that could have a direct and material effect on a Federal program; and
 - (ii) Any other laws and regulations that are identified in the compliance supplement; and
- (3) Funds, property, and other assets are safeguarded against loss from unauthorized use or disposition.

Loan means a Federal loan or loan guarantee received or administered by a non-Federal entity.

Local government means any unit of local government within a State, including a county, borough, municipality, city, town, township, parish, local public authority, special district, school district, intrastate district, council of governments, and any other instrumentality of local government.

Major program means a Federal program determined by the auditor to be a major program in accordance with § ___.**520** or a program identified as a major program by a Federal agency or pass-through entity in accordance with § ___.**215(c)**.

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

Non-Federal entity means a State, local government, or non-profit organization.

Non-profit organization means:

(1) any corporation, trust, association, cooperative, or other organization that:

(i) Is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest;

(ii) Is not organized primarily for profit; and

(iii) Uses its net proceeds to maintain, improve, or expand its operations; and

(2) The term **non-profit organization** includes non-profit institutions of higher education and hospitals.

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

Oversight agency for audit means the Federal awarding agency that provides the predominant amount of direct funding to a recipient not assigned a cognizant agency for audit. When there is no direct funding, the Federal agency with the predominant indirect funding shall assume the oversight responsibilities. The duties of the oversight agency for audit are described in § ___.**400(b)**.

Effective July 28, 2003, the following is added to this definition:

A Federal agency with oversight for an auditee may reassign oversight to another Federal agency which provides substantial funding and agrees to be the oversight agency for audit. Within 30 days after any reassignment, both the old and the new

oversight agency for audit shall notify the auditee, and, if known, the auditor of the reassignment.

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

Program-specific audit means an audit of one Federal program as provided for in § ____.200(c) and § ____.235.

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

- (1) Which resulted from a violation or possible violation of a provision of a law, regulation, contract, grant, cooperative agreement, or other agreement or document governing the use of Federal funds, including funds used to match Federal funds;
- (2) Where the costs, at the time of the audit, are not supported by adequate documentation; or
- (3) Where the costs incurred appear unreasonable and do not reflect the actions a prudent person would take in the circumstances.

Recipient means a non-Federal entity that expends Federal awards received directly from a Federal awarding agency to carry out a Federal program.

Research and development (R&D) means all research activities, both basic and applied, and all development activities that are performed by a non-Federal entity. **Research** is defined as a systematic study directed toward fuller scientific knowledge or understanding of the subject studied. The term research also includes activities involving the training of individuals in research techniques where such activities utilize the same facilities as other research and development activities and where such activities are not included in the instruction function. **Development** is the systematic use of knowledge and understanding gained from research directed toward the production of useful materials, devices, systems, or methods, including design and development of prototypes and processes.

Single audit means an audit which includes both the entity's financial statements and the Federal awards as described in § ____.500.

State means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands, any instrumentality thereof, any multi-State, regional, or interstate entity which has governmental functions, and any Indian tribe as defined in this section.

Student Financial Aid (SFA) includes those programs of general student assistance, such as those authorized by Title IV of the Higher Education Act of 1965, as amended, (20 U.S.C. 1070 **et seq.**) which is administered by the U.S. Department of Education, and similar programs provided by other Federal agencies. It does not include programs which provide fellowships or similar Federal awards to students on a competitive basis, or for specified studies or research.

Subrecipient means a non-Federal entity that expends Federal awards received from a pass-through entity to carry out a Federal program, but does not include an individual that is a beneficiary of such a program. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency. Guidance on distinguishing between a subrecipient and a vendor is provided in § ____.210.

Types of compliance requirements refers to the types of compliance requirements listed in the compliance supplement. Examples include: activities allowed or unallowed; allowable costs/cost principles; cash management; eligibility; matching, level of effort, earmarking; and, reporting.

Vendor means a dealer, distributor, merchant, or other seller providing goods or services that are required for the conduct of a Federal program. These goods or services may be for an organization's own use or for the use of beneficiaries of the Federal program. Additional guidance on distinguishing between a subrecipient and a vendor is provided in § ____.210.

Subpart B--Audits

§ ____.200 Audit requirements.

(a) **Audit required.** Non-Federal entities that expend \$300,000 (*\$500,000 for fiscal years ending after December 31, 2003*) or more in a year in Federal awards shall have a single or program-specific audit conducted for that year in accordance with the provisions of this part. Guidance on determining Federal awards expended is provided in § ____.205.

(b) **Single audit.** Non-Federal entities that expend \$300,000 (*\$500,000 for fiscal years ending after December 31, 2003*) or more in a year in Federal awards shall have a single audit conducted in accordance with § ____.500 except when they elect to have a program-specific audit conducted in accordance with paragraph (c) of this section.

(c) **Program-specific audit election.** When an auditee expends Federal awards under only one Federal program (excluding R&D) and the Federal program's laws, regulations, or grant agreements do not require a financial statement audit of the auditee, the auditee may elect to have a program-specific audit conducted in accordance with § ____.235. A program-specific audit may not be elected for R&D unless all of the Federal awards expended were received from the same Federal agency, or the same Federal agency and the same pass-through entity, and that Federal agency, or pass-through entity in the case of a subrecipient, approves in advance a program-specific audit.

(d) **Exemption when Federal awards expended are less than \$300,000 (\$500,000 for fiscal years ending after December 31, 2003).** Non-Federal entities that expend less than \$300,000 (\$500,000 for fiscal years ending after December 31, 2003) a year in Federal awards are exempt from Federal audit requirements for that year, except as noted in § __.215(a), but records must be available for review or audit by appropriate officials of the Federal agency, pass-through entity, and General Accounting Office (GAO).

(e) **Federally Funded Research and Development Centers (FFRDC).** Management of an auditee that owns or operates a FFRDC may elect to treat the FFRDC as a separate entity for purposes of this part.

§ __.205 Basis for determining Federal awards expended.

(a) **Determining Federal awards expended.** The determination of when an award is expended should be based on when the activity related to the award occurs. Generally, the activity pertains to events that require the non-Federal entity to comply with laws, regulations, and the provisions of contracts or grant agreements, such as: expenditure/expense transactions associated with grants, cost-reimbursement contracts, cooperative agreements, and direct appropriations; the disbursement of funds passed through to subrecipients; the use of loan proceeds under loan and loan guarantee programs; the receipt of property; the receipt of surplus property; the receipt or use of program income; the distribution or consumption of food commodities; the disbursement of amounts entitling the non-Federal entity to an interest subsidy; and, the period when insurance is in force.

(b) **Loan and loan guarantees (loans).** Since the Federal Government is at risk for loans until the debt is repaid, the following guidelines shall be used to calculate the value of Federal awards expended under loan programs, except as noted in paragraphs (c) and (d) of this section:

- (1) Value of new loans made or received during the fiscal year; plus
- (2) Balance of loans from previous years for which the Federal Government imposes continuing compliance requirements; plus
- (3) Any interest subsidy, cash, or administrative cost allowance received.

(c) **Loan and loan guarantees (loans) at institutions of higher education.** When loans are made to students of an institution of higher education but the institution does not make the loans, then only the value of loans made during the year shall be considered Federal awards expended in that year. The balance of loans for previous years is not included as Federal awards expended because the lender accounts for the prior balances.

(d) **Prior loan and loan guarantees (loans).** Loans, the proceeds of which were received and expended in prior-years, are not considered Federal awards expended under this part when the laws, regulations, and the provisions of contracts or grant agreements pertaining

to such loans impose no continuing compliance requirements other than to repay the loans.

(e) **Endowment funds.** The cumulative balance of Federal awards for endowment funds which are federally restricted are considered awards expended in each year in which the funds are still restricted.

(f) **Free rent.** Free rent received by itself is not considered a Federal award expended under this part. However, free rent received as part of an award to carry out a Federal program shall be included in determining Federal awards expended and subject to audit under this part.

(g) **Valuing non-cash assistance.** Federal non-cash assistance, such as free rent, food stamps, food commodities, donated property, or donated surplus property, shall be valued at fair market value at the time of receipt or the assessed value provided by the Federal agency.

(h) **Medicare.** Medicare payments to a non-Federal entity for providing patient care services to Medicare eligible individuals are not considered Federal awards expended under this part.

(i) **Medicaid.** Medicaid payments to a subrecipient for providing patient care services to Medicaid eligible individuals are not considered Federal awards expended under this part unless a State requires the funds to be treated as Federal awards expended because reimbursement is on a cost-reimbursement basis.

(j) **Certain loans provided by the National Credit Union Administration.** For purposes of this part, loans made from the National Credit Union Share Insurance Fund and the Central Liquidity Facility that are funded by contributions from insured institutions are not considered Federal awards expended.

§ __.210 Subrecipient and vendor determinations.

(a) **General.** An auditee may be a recipient, a subrecipient, and a vendor. Federal awards expended as a recipient or a subrecipient would be subject to audit under this part. The payments received for goods or services provided as a vendor would not be considered Federal awards. The guidance in paragraphs (b) and (c) of this section should be considered in determining whether payments constitute a Federal award or a payment for goods and services.

(b) **Federal award.** Characteristics indicative of a Federal award received by a subrecipient are when the organization:

- (1) Determines who is eligible to receive what Federal financial assistance;

- (2) Has its performance measured against whether the objectives of the Federal program are met;
- (3) Has responsibility for programmatic decision making;
- (4) Has responsibility for adherence to applicable Federal program compliance requirements; and
- (5) Uses the Federal funds to carry out a program of the organization as compared to providing goods or services for a program of the pass-through entity.

(c) **Payment for goods and services.** Characteristics indicative of a payment for goods and services received by a vendor are when the organization:

- (1) Provides the goods and services within normal business operations;
- (2) Provides similar goods or services to many different purchasers;
- (3) Operates in a competitive environment;
- (4) Provides goods or services that are ancillary to the operation of the Federal program; and
- (5) Is not subject to compliance requirements of the Federal program.

(d) **Use of judgment in making determination.** There may be unusual circumstances or exceptions to the listed characteristics. In making the determination of whether a subrecipient or vendor relationship exists, the substance of the relationship is more important than the form of the agreement. It is not expected that all of the characteristics will be present and judgment should be used in determining whether an entity is a subrecipient or vendor.

(e) **For-profit subrecipient.** Since this part does not apply to for-profit subrecipients, the pass-through entity is responsible for establishing requirements, as necessary, to ensure compliance by for-profit subrecipients. The contract with the for-profit subrecipient should describe applicable compliance requirements and the for-profit subrecipient's compliance responsibility. Methods to ensure compliance for Federal awards made to for-profit subrecipients may include pre-award audits, monitoring during the contract, and post-award audits.

(f) **Compliance responsibility for vendors.** In most cases, the auditee's compliance responsibility for vendors is only to ensure that the procurement, receipt, and payment for goods and services comply with laws, regulations, and the provisions of contracts or grant agreements. Program compliance requirements normally do not pass through to vendors. However, the auditee is responsible for ensuring compliance for vendor transactions which are structured such that the vendor is responsible for program

compliance or the vendor's records must be reviewed to determine program compliance. Also, when these vendor transactions relate to a major program, the scope of the audit shall include determining whether these transactions are in compliance with laws, regulations, and the provisions of contracts or grant agreements.

§ __.215 Relation to other audit requirements.

(a) **Audit under this part in lieu of other audits.** An audit made in accordance with this part shall be in lieu of any financial audit required under individual Federal awards. To the extent this audit meets a Federal agency's needs, it shall rely upon and use such audits. The provisions of this part neither limit the authority of Federal agencies, including their Inspectors General, or GAO to conduct or arrange for additional audits (e.g., financial audits, performance audits, evaluations, inspections, or reviews) nor authorize any auditee to constrain Federal agencies from carrying out additional audits. Any additional audits shall be planned and performed in such a way as to build upon work performed by other auditors.

(b) **Federal agency to pay for additional audits.** A Federal agency that conducts or contracts for additional audits shall, consistent with other applicable laws and regulations, arrange for funding the full cost of such additional audits.

(c) **Request for a program to be audited as a major program.** A Federal agency may request an auditee to have a particular Federal program audited as a major program in lieu of the Federal agency conducting or arranging for the additional audits. To allow for planning, such requests should be made at least 180 days prior to the end of the fiscal year to be audited. The auditee, after consultation with its auditor, should promptly respond to such request by informing the Federal agency whether the program would otherwise be audited as a major program using the risk-based audit approach described in § __.520 and, if not, the estimated incremental cost. The Federal agency shall then promptly confirm to the auditee whether it wants the program audited as a major program. If the program is to be audited as a major program based upon this Federal agency request, and the Federal agency agrees to pay the full incremental costs, then the auditee shall have the program audited as a major program. A pass-through entity may use the provisions of this paragraph for a subrecipient.

§ __.220 Frequency of audits.

Except for the provisions for biennial audits provided in paragraphs (a) and (b) of this section, audits required by this part shall be performed annually. Any biennial audit shall cover both years within the biennial period.

(a) A State or local government that is required by constitution or statute, in effect on January 1, 1987, to undergo its audits less frequently than annually, is permitted to undergo its audits pursuant to this part biennially. This requirement must still be in effect for the biennial period under audit.

(b) Any non-profit organization that had biennial audits for all biennial periods ending between July 1, 1992, and January 1, 1995, is permitted to undergo its audits pursuant to this part biennially.

§ __.225 Sanctions.

No audit costs may be charged to Federal awards when audits required by this part have not been made or have been made but not in accordance with this part. In cases of continued inability or unwillingness to have an audit conducted in accordance with this part, Federal agencies and pass-through entities shall take appropriate action using sanctions such as:

- (a) Withholding a percentage of Federal awards until the audit is completed satisfactorily;
- (b) Withholding or disallowing overhead costs;
- (c) Suspending Federal awards until the audit is conducted; or
- (d) Terminating the Federal award.

§ __.230 Audit costs.

(a) **Allowable costs.** Unless prohibited by law, the cost of audits made in accordance with the provisions of this part are allowable charges to Federal awards. The charges may be considered a direct cost or an allocated indirect cost, as determined in accordance with the provisions of applicable OMB cost principles circulars, the Federal Acquisition Regulation (FAR) (48 CFR parts 30 and 31), or other applicable cost principles or regulations.

(b) **Unallowable costs.** A non-Federal entity shall not charge the following to a Federal award:

(1) The cost of any audit under the Single Audit Act Amendments of 1996 (31 U.S.C. 7501 **et seq.**) not conducted in accordance with this part.

(2) The cost of auditing a non-Federal entity which has Federal awards expended of less than \$300,000 (*\$500,000 for fiscal years ending after December 31, 2003*) per year and is thereby exempted under § __.200(d) from having an audit conducted under this part. However, this does not prohibit a pass-through entity from charging Federal awards for the cost of limited scope audits to monitor its subrecipients in accordance with § __.400(d)(3), provided the subrecipient does not have a single audit. For purposes of this part, limited scope audits only include agreed-upon procedures engagements conducted in accordance with either the AICPA's generally accepted auditing standards or attestation standards, that are paid for and arranged by a pass-through entity and address only one or more of the following types of compliance requirements: activities allowed or unallowed;

allowable costs/cost principles; eligibility; matching, level of effort, earmarking; and, reporting.

§ __.235 Program-specific audits.

(a) **Program-specific audit guide available.** In many cases, a program-specific audit guide will be available to provide specific guidance to the auditor with respect to internal control, compliance requirements, suggested audit procedures, and audit reporting requirements. The auditor should contact the Office of Inspector General of the Federal agency to determine whether such a guide is available. When a current program-specific audit guide is available, the auditor shall follow GAGAS and the guide when performing a program-specific audit.

(b) **Program-specific audit guide not available.**

(1) When a program-specific audit guide is not available, the auditee and auditor shall have basically the same responsibilities for the Federal program as they would have for an audit of a major program in a single audit.

(2) The auditee shall prepare the financial statement(s) for the Federal program that includes, at a minimum, a schedule of expenditures of Federal awards for the program and notes that describe the significant accounting policies used in preparing the schedule, a summary schedule of prior audit findings consistent with the requirements of § __.315(b), and a corrective action plan consistent with the requirements of § __.315(c).

(3) The auditor shall:

(i) Perform an audit of the financial statement(s) for the Federal program in accordance with GAGAS;

(ii) Obtain an understanding of internal control and perform tests of internal control over the Federal program consistent with the requirements of § __.500(c) for a major program;

(iii) Perform procedures to determine whether the auditee has complied with laws, regulations, and the provisions of contracts or grant agreements that could have a direct and material effect on the Federal program consistent with the requirements of § __.500(d) for a major program; and

(iv) Follow up on prior audit findings, perform procedures to assess the reasonableness of the summary schedule of prior audit findings prepared by the auditee, and report, as a current year audit finding, when the auditor concludes that the summary schedule of prior audit findings materially misrepresents the status of any prior audit finding in accordance with the requirements of § __.500(e).

(4) The auditor's report(s) may be in the form of either combined or separate reports and may be organized differently from the manner presented in this section. The auditor's report(s) shall state that the audit was conducted in accordance with this part and include the following:

- (i) An opinion (or disclaimer of opinion) as to whether the financial statement(s) of the Federal program is presented fairly in all material respects in conformity with the stated accounting policies;
- (ii) A report on internal control related to the Federal program, which shall describe the scope of testing of internal control and the results of the tests;
- (iii) A report on compliance which includes an opinion (or disclaimer of opinion) as to whether the auditee complied with laws, regulations, and the provisions of contracts or grant agreements which could have a direct and material effect on the Federal program; and
- (iv) A schedule of findings and questioned costs for the Federal program that includes a summary of the auditor's results relative to the Federal program in a format consistent with § __.505(d)(1) and findings and questioned costs consistent with the requirements of § __.505(d)(3).

(c) Report submission for program-specific audits.

(1) The audit shall be completed and the reporting required by paragraph (c)(2) or (c)(3) of this section submitted within the earlier of 30 days after receipt of the auditor's report(s), or nine months after the end of the audit period, unless a longer period is agreed to in advance by the Federal agency that provided the funding or a different period is specified in a program-specific audit guide. (However, for fiscal years beginning on or before June 30, 1998, the audit shall be completed and the required reporting shall be submitted within the earlier of 30 days after receipt of the auditor's report(s), or 13 months after the end of the audit period, unless a different period is specified in a program-specific audit guide.) Unless restricted by law or regulation, the auditee shall make report copies available for public inspection.

(2) When a program-specific audit guide is available, the auditee shall submit to the Federal clearinghouse designated by OMB the data collection form prepared in accordance with § __.320(b), as applicable to a program-specific audit, and the reporting required by the program-specific audit guide to be retained as an archival copy. Also, the auditee shall submit to the Federal awarding agency or pass-through entity the reporting required by the program-specific audit guide.

(3) When a program-specific audit guide is not available, the reporting package for a program-specific audit shall consist of the financial statement(s) of the Federal program, a summary schedule of prior audit findings, and a corrective

action plan as described in paragraph **(b)(2)** of this section, and the auditor's report(s) described in paragraph **(b)(4)** of this section. The data collection form prepared in accordance with § **320(b)**, as applicable to a program-specific audit, and one copy of this reporting package shall be submitted to the Federal clearinghouse designated by OMB to be retained as an archival copy. Also, when the schedule of findings and questioned costs disclosed audit findings or the summary schedule of prior audit findings reported the status of any audit findings, the auditee shall submit one copy of the reporting package to the Federal clearinghouse on behalf of the Federal awarding agency, or directly to the pass-through entity in the case of a subrecipient. Instead of submitting the reporting package to the pass-through entity, when a subrecipient is not required to submit a reporting package to the pass-through entity, the subrecipient shall provide written notification to the pass-through entity, consistent with the requirements of § **320(e)(2)**. A subrecipient may submit a copy of the reporting package to the pass-through entity to comply with this notification requirement.

(d) Other sections of this part may apply. Program-specific audits are subject to § **100** through § **215(b)**, § **220** through § **230**, § **300** through § **305**, § **315**, § **320(f)** through § **320(j)**, § **400** through § **405**, § **510** through § **515**, and other referenced provisions of this part unless contrary to the provisions of this section, a program-specific audit guide, or program laws and regulations.

Subpart C--Auditees

§ 300 Auditee responsibilities.

The auditee shall:

(a) Identify, in its accounts, all Federal awards received and expended and the Federal programs under which they were received. Federal program and award identification shall include, as applicable, the CFDA title and number, award number and year, name of the Federal agency, and name of the pass-through entity.

(b) Maintain internal control over Federal programs that provides reasonable assurance that the auditee is managing Federal awards in compliance with laws, regulations, and the provisions of contracts or grant agreements that could have a material effect on each of its Federal programs.

(c) Comply with laws, regulations, and the provisions of contracts or grant agreements related to each of its Federal programs.

(d) Prepare appropriate financial statements, including the schedule of expenditures of Federal awards in accordance with § **310**.

(e) Ensure that the audits required by this part are properly performed and submitted when due. When extensions to the report submission due date required by § ___.320(a) are granted by the cognizant or oversight agency for audit, promptly notify the Federal clearinghouse designated by OMB and each pass-through entity providing Federal awards of the extension.

(f) Follow up and take corrective action on audit findings, including preparation of a summary schedule of prior audit findings and a corrective action plan in accordance with § ___.315(b) and § ___.315(c), respectively.

§ ___.305 Auditor selection.

(a) **Auditor procurement.** In procuring audit services, auditees shall follow the procurement standards prescribed by the Grants Management Common Rule (hereinafter referred to as the "A-102 Common Rule") published March 11, 1988 and amended April 19, 1995 [insert appropriate CFR citation], Circular A-110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations," or the FAR (48 CFR part 42), as applicable (OMB Circulars are available from the Office of Administration, Publications Office, room 2200, New Executive Office Building, Washington, DC 20503). Whenever possible, auditees shall make positive efforts to utilize small businesses, minority-owned firms, and women's business enterprises, in procuring audit services as stated in the A-102 Common Rule, OMB Circular A-110, or the FAR (48 CFR part 42), as applicable. In requesting proposals for audit services, the objectives and scope of the audit should be made clear. Factors to be considered in evaluating each proposal for audit services include the responsiveness to the request for proposal, relevant experience, availability of staff with professional qualifications and technical abilities, the results of external quality control reviews, and price.

(b) **Restriction on auditor preparing indirect cost proposals.** An auditor who prepares the indirect cost proposal or cost allocation plan may not also be selected to perform the audit required by this part when the indirect costs recovered by the auditee during the prior year exceeded \$1 million. This restriction applies to the base year used in the preparation of the indirect cost proposal or cost allocation plan and any subsequent years in which the resulting indirect cost agreement or cost allocation plan is used to recover costs. To minimize any disruption in existing contracts for audit services, this paragraph applies to audits of fiscal years beginning after June 30, 1998.

(c) **Use of Federal auditors.** Federal auditors may perform all or part of the work required under this part if they comply fully with the requirements of this part.

§ ___.310 Financial statements.

(a) **Financial statements.** The auditee shall prepare financial statements that reflect its financial position, results of operations or changes in net assets, and, where appropriate, cash flows for the fiscal year audited. The financial statements shall be for the same

organizational unit and fiscal year that is chosen to meet the requirements of this part. However, organization-wide financial statements may also include departments, agencies, and other organizational units that have separate audits in accordance with § __.500(a) and prepare separate financial statements.

(b) **Schedule of expenditures of Federal awards.** The auditee shall also prepare a schedule of expenditures of Federal awards for the period covered by the auditee's financial statements. While not required, the auditee may choose to provide information requested by Federal awarding agencies and pass-through entities to make the schedule easier to use. For example, when a Federal program has multiple award years, the auditee may list the amount of Federal awards expended for each award year separately. At a minimum, the schedule shall:

(1) List individual Federal programs by Federal agency. For Federal programs included in a cluster of programs, list individual Federal programs within a cluster of programs. For R&D, total Federal awards expended shall be shown either by individual award or by Federal agency and major subdivision within the Federal agency. For example, the National Institutes of Health is a major subdivision in the Department of Health and Human Services.

(2) For Federal awards received as a subrecipient, the name of the pass-through entity and identifying number assigned by the pass-through entity shall be included.

(3) Provide total Federal awards expended for each individual Federal program and the CFDA number or other identifying number when the CFDA information is not available.

(4) Include notes that describe the significant accounting policies used in preparing the schedule.

(5) To the extent practical, pass-through entities should identify in the schedule the total amount provided to subrecipients from each Federal program.

(6) Include, in either the schedule or a note to the schedule, the value of the Federal awards expended in the form of non-cash assistance, the amount of insurance in effect during the year, and loans or loan guarantees outstanding at year end. While not required, it is preferable to present this information in the schedule.

§ __.315 Audit findings follow-up.

(a) **General.** The auditee is responsible for follow-up and corrective action on all audit findings. As part of this responsibility, the auditee shall prepare a summary schedule of prior audit findings. The auditee shall also prepare a corrective action plan for current year audit findings. The summary schedule of prior audit findings and the corrective

action plan shall include the reference numbers the auditor assigns to audit findings under § __.510(c). Since the summary schedule may include audit findings from multiple years, it shall include the fiscal year in which the finding initially occurred.

(b) **Summary schedule of prior audit findings.** The summary schedule of prior audit findings shall report the status of all audit findings included in the prior audit's schedule of findings and questioned costs relative to Federal awards. The summary schedule shall also include audit findings reported in the prior audit's summary schedule of prior audit findings except audit findings listed as corrected in accordance with paragraph (b)(1) of this section, or no longer valid or not warranting further action in accordance with paragraph (b)(4) of this section.

(1) When audit findings were fully corrected, the summary schedule need only list the audit findings and state that corrective action was taken.

(2) When audit findings were not corrected or were only partially corrected, the summary schedule shall describe the planned corrective action as well as any partial corrective action taken.

(3) When corrective action taken is significantly different from corrective action previously reported in a corrective action plan or in the Federal agency's or pass-through entity's management decision, the summary schedule shall provide an explanation.

(4) When the auditee believes the audit findings are no longer valid or do not warrant further action, the reasons for this position shall be described in the summary schedule. A valid reason for considering an audit finding as not warranting further action is that all of the following have occurred:

(i) Two years have passed since the audit report in which the finding occurred was submitted to the Federal clearinghouse;

(ii) The Federal agency or pass-through entity is not currently following up with the auditee on the audit finding; and

(iii) A management decision was not issued.

(c) **Corrective action plan.** At the completion of the audit, the auditee shall prepare a corrective action plan to address each audit finding included in the current year auditor's reports. The corrective action plan shall provide the name(s) of the contact person(s) responsible for corrective action, the corrective action planned, and the anticipated completion date. If the auditee does not agree with the audit findings or believes corrective action is not required, then the corrective action plan shall include an explanation and specific reasons.

§ __.320 **Report submission.**

(a) **General.** The audit shall be completed and the data collection form described in paragraph (b) of this section and reporting package described in paragraph (c) of this section shall be submitted within the earlier of 30 days after receipt of the auditor's report(s), or nine months after the end of the audit period, unless a longer period is agreed to in advance by the cognizant or oversight agency for audit. (However, for fiscal years beginning on or before June 30, 1998, the audit shall be completed and the data collection form and reporting package shall be submitted within the earlier of 30 days after receipt of the auditor's report(s), or 13 months after the end of the audit period.) Unless restricted by law or regulation, the auditee shall make copies available for public inspection.

(b) **Data Collection.**

(1) The auditee shall submit a data collection form which states whether the audit was completed in accordance with this part and provides information about the auditee, its Federal programs, and the results of the audit. The form shall be approved by OMB, available from the Federal clearinghouse designated by OMB, and include data elements similar to those presented in this paragraph. A senior level representative of the auditee (e.g., State controller, director of finance, chief executive officer, or chief financial officer) shall sign a statement to be included as part of the form certifying that: the auditee complied with the requirements of this part, the form was prepared in accordance with this part (and the instructions accompanying the form), and the information included in the form, in its entirety, are accurate and complete.

(2) The data collection form shall include the following data elements:

(i) The type of report the auditor issued on the financial statements of the auditee (i.e., unqualified opinion, qualified opinion, adverse opinion, or disclaimer of opinion).

(ii) Where applicable, a statement that reportable conditions in internal control were disclosed by the audit of the financial statements and whether any such conditions were material weaknesses.

(iii) A statement as to whether the audit disclosed any noncompliance which is material to the financial statements of the auditee.

(iv) Where applicable, a statement that reportable conditions in internal control over major programs were disclosed by the audit and whether any such conditions were material weaknesses.

(v) The type of report the auditor issued on compliance for major programs (i.e., unqualified opinion, qualified opinion, adverse opinion, or disclaimer of opinion).

(vi) A list of the Federal awarding agencies which will receive a copy of the reporting package pursuant to §___.320(d)(2) of OMB Circular A-133.

(vii) A yes or no statement as to whether the auditee qualified as a low-risk auditee under §___.530 of OMB Circular A-133.

(viii) The dollar threshold used to distinguish between Type A and Type B programs as defined in §___.520(b) of OMB Circular A-133.

(ix) The **Catalog of Federal Domestic Assistance** (CFDA) number for each Federal program, as applicable.

(x) The name of each Federal program and identification of each major program. Individual programs within a cluster of programs should be listed in the same level of detail as they are listed in the schedule of expenditures of Federal awards.

(xi) The amount of expenditures in the schedule of expenditures of Federal awards associated with each Federal program.

(xii) For each Federal program, a yes or no statement as to whether there are audit findings in each of the following types of compliance requirements and the total amount of any questioned costs:

(A) Activities allowed or unallowed.

(B) Allowable costs/cost principles.

(C) Cash management.

(D) Davis-Bacon Act.

(E) Eligibility.

(F) Equipment and real property management.

(G) Matching, level of effort, earmarking.

(H) Period of availability of Federal funds.

(I) Procurement and suspension and debarment.

(J) Program income.

(K) Real property acquisition and relocation assistance.

(L) Reporting.

(M) Subrecipient monitoring.

(N) Special tests and provisions.

(xiii) Auditee Name, Employer Identification Number(s), Name and Title of Certifying Official, Telephone Number, Signature, and Date.

(xiv) Auditor Name, Name and Title of Contact Person, Auditor Address, Auditor Telephone Number, Signature, and Date.

(xv) Whether the auditee has either a cognizant or oversight agency for audit.

(xvi) The name of the cognizant or oversight agency for audit determined in accordance with § ____.400(a) and § ____.400(b), respectively.

(3) Using the information included in the reporting package described in paragraph (c) of this section, the auditor shall complete the applicable sections of the form. The auditor shall sign a statement to be included as part of the data collection form that indicates, at a minimum, the source of the information included in the form, the auditor's responsibility for the information, that the form is not a substitute for the reporting package described in paragraph (c) of this section, and that the content of the form is limited to the data elements prescribed by OMB.

(c) **Reporting package.** The reporting package shall include the:

(1) Financial statements and schedule of expenditures of Federal awards discussed in § ____.310(a) and § ____.310(b), respectively;

(2) Summary schedule of prior audit findings discussed in § ____.315(b);

(3) Auditor's report(s) discussed in § ____.505; and

(4) Corrective action plan discussed in § ____.315(c).

(d) **Submission to clearinghouse.** All auditees shall submit to the Federal clearinghouse designated by OMB the data collection form described in paragraph (b) of this section and one copy of the reporting package described in paragraph (c) of this section for:

(1) The Federal clearinghouse to retain as an archival copy; and

(2) Each Federal awarding agency when the schedule of findings and questioned costs disclosed audit findings relating to Federal awards that the Federal awarding

agency provided directly or the summary schedule of prior audit findings reported the status of any audit findings relating to Federal awards that the Federal awarding agency provided directly.

(e) Additional submission by subrecipients.

(1) In addition to the requirements discussed in paragraph **(d)** of this section, auditees that are also subrecipients shall submit to each pass-through entity one copy of the reporting package described in paragraph **(c)** of this section for each pass-through entity when the schedule of findings and questioned costs disclosed audit findings relating to Federal awards that the pass-through entity provided or the summary schedule of prior audit findings reported the status of any audit findings relating to Federal awards that the pass-through entity provided.

(2) Instead of submitting the reporting package to a pass-through entity, when a subrecipient is not required to submit a reporting package to a pass-through entity pursuant to paragraph **(e)(1)** of this section, the subrecipient shall provide written notification to the pass-through entity that: an audit of the subrecipient was conducted in accordance with this part (including the period covered by the audit and the name, amount, and CFDA number of the Federal award(s) provided by the pass-through entity); the schedule of findings and questioned costs disclosed no audit findings relating to the Federal award(s) that the pass-through entity provided; and, the summary schedule of prior audit findings did not report on the status of any audit findings relating to the Federal award(s) that the pass-through entity provided. A subrecipient may submit a copy of the reporting package described in paragraph **(c)** of this section to a pass-through entity to comply with this notification requirement.

(f) Requests for report copies. In response to requests by a Federal agency or pass-through entity, auditees shall submit the appropriate copies of the reporting package described in paragraph **(c)** of this section and, if requested, a copy of any management letters issued by the auditor.

(g) Report retention requirements. Auditees shall keep one copy of the data collection form described in paragraph **(b)** of this section and one copy of the reporting package described in paragraph **(c)** of this section on file for three years from the date of submission to the Federal clearinghouse designated by OMB. Pass-through entities shall keep subrecipients' submissions on file for three years from date of receipt.

(h) Clearinghouse responsibilities. The Federal clearinghouse designated by OMB shall distribute the reporting packages received in accordance with paragraph **(d)(2)** of this section and § .235(c)(3) to applicable Federal awarding agencies, maintain a data base of completed audits, provide appropriate information to Federal agencies, and follow up with known auditees which have not submitted the required data collection forms and reporting packages.

(i) **Clearinghouse address.** The address of the Federal clearinghouse currently designated by OMB is Federal Audit Clearinghouse, Bureau of the Census, 1201 E. 10th Street, Jeffersonville, IN 47132.

(j) **Electronic filing.** Nothing in this part shall preclude electronic submissions to the Federal clearinghouse in such manner as may be approved by OMB. With OMB approval, the Federal clearinghouse may pilot test methods of electronic submissions.

Subpart D--Federal Agencies and Pass-Through Entities

§ __.400 Responsibilities.

(a) **Cognizant agency for audit responsibilities.** Recipients expending more than \$25 million (*\$50 million for fiscal years ending after December 31, 2003*) a year in Federal awards shall have a cognizant agency for audit. The designated cognizant agency for audit shall be the Federal awarding agency that provides the predominant amount of direct funding to a recipient unless OMB makes a specific cognizant agency for audit assignment.

Following is effective for fiscal years ending on or before December 31, 2003: To provide for continuity of cognizance, the determination of the predominant amount of direct funding shall be based upon direct Federal awards expended in the recipient's fiscal years ending in 1995, 2000, 2005, and every fifth year thereafter. For example, audit cognizance for periods ending in 1997 through 2000 will be determined based on Federal awards expended in 1995. (However, for States and local governments that expend more than \$25 million a year in Federal awards and have previously assigned cognizant agencies for audit, the requirements of this paragraph are not effective until fiscal years beginning after June 30, 2000.)

Following is effective for fiscal years ending after December 31, 2003: The determination of the predominant amount of direct funding shall be based upon direct Federal awards expended in the recipient's fiscal years ending in 2004, 2009, 2014, and every fifth year thereafter. For example, audit cognizance for periods ending in 2006 through 2010 will be determined based on Federal awards expended in 2004. (However, for 2001 through 2005, the cognizant agency for audit is determined based on the predominant amount of direct Federal awards expended in the recipient's fiscal year ending in 2000).

Notwithstanding the manner in which audit cognizance is determined, a Federal awarding agency with cognizance for an auditee may reassign cognizance to another Federal awarding agency which provides substantial direct funding and agrees to be the cognizant agency for audit. Within 30 days after any reassignment, both the old and the new cognizant agency for audit shall notify the auditee, and, if known, the auditor of the reassignment. The cognizant agency for audit shall:

- (1) Provide technical audit advice and liaison to auditees and auditors.
 - (2) Consider auditee requests for extensions to the report submission due date required by § ____.320(a). The cognizant agency for audit may grant extensions for good cause.
 - (3) Obtain or conduct quality control reviews of selected audits made by non-Federal auditors, and provide the results, when appropriate, to other interested organizations.
 - (4) Promptly inform other affected Federal agencies and appropriate Federal law enforcement officials of any direct reporting by the auditee or its auditor of irregularities or illegal acts, as required by GAGAS or laws and regulations.
 - (5) Advise the auditor and, where appropriate, the auditee of any deficiencies found in the audits when the deficiencies require corrective action by the auditor. When advised of deficiencies, the auditee shall work with the auditor to take corrective action. If corrective action is not taken, the cognizant agency for audit shall notify the auditor, the auditee, and applicable Federal awarding agencies and pass-through entities of the facts and make recommendations for follow-up action. Major inadequacies or repetitive substandard performance by auditors shall be referred to appropriate State licensing agencies and professional bodies for disciplinary action.
 - (6) Coordinate, to the extent practical, audits or reviews made by or for Federal agencies that are in addition to the audits made pursuant to this part, so that the additional audits or reviews build upon audits performed in accordance with this part.
 - (7) Coordinate a management decision for audit findings that affect the Federal programs of more than one agency.
 - (8) Coordinate the audit work and reporting responsibilities among auditors to achieve the most cost-effective audit.
 - (9) For biennial audits permitted under § ____.220, consider auditee requests to qualify as a low-risk auditee under § ____.530(a).
- (b) **Oversight agency for audit responsibilities.** An auditee which does not have a designated cognizant agency for audit will be under the general oversight of the Federal agency determined in accordance with § ____.105. The oversight agency for audit:
- (1) Shall provide technical advice to auditees and auditors as requested.
 - (2) May assume all or some of the responsibilities normally performed by a cognizant agency for audit.

(c) **Federal awarding agency responsibilities.** The Federal awarding agency shall perform the following for the Federal awards it makes:

- (1) Identify Federal awards made by informing each recipient of the CFDA title and number, award name and number, award year, and if the award is for R&D. When some of this information is not available, the Federal agency shall provide information necessary to clearly describe the Federal award.
- (2) Advise recipients of requirements imposed on them by Federal laws, regulations, and the provisions of contracts or grant agreements.
- (3) Ensure that audits are completed and reports are received in a timely manner and in accordance with the requirements of this part.
- (4) Provide technical advice and counsel to auditees and auditors as requested.
- (5) Issue a management decision on audit findings within six months after receipt of the audit report and ensure that the recipient takes appropriate and timely corrective action.
- (6) Assign a person responsible for providing annual updates of the compliance supplement to OMB.

(d) **Pass-through entity responsibilities.** A pass-through entity shall perform the following for the Federal awards it makes:

- (1) Identify Federal awards made by informing each subrecipient of CFDA title and number, award name and number, award year, if the award is R&D, and name of Federal agency. When some of this information is not available, the pass-through entity shall provide the best information available to describe the Federal award.
- (2) Advise subrecipients of requirements imposed on them by Federal laws, regulations, and the provisions of contracts or grant agreements as well as any supplemental requirements imposed by the pass-through entity.
- (3) Monitor the activities of subrecipients as necessary to ensure that Federal awards are used for authorized purposes in compliance with laws, regulations, and the provisions of contracts or grant agreements and that performance goals are achieved.
- (4) Ensure that subrecipients expending \$300,000 (*\$500,000 for fiscal years ending after December 31, 2003*) or more in Federal awards during the subrecipient's fiscal year have met the audit requirements of this part for that fiscal year.

(5) Issue a management decision on audit findings within six months after receipt of the subrecipient's audit report and ensure that the subrecipient takes appropriate and timely corrective action.

(6) Consider whether subrecipient audits necessitate adjustment of the pass-through entity's own records.

(7) Require each subrecipient to permit the pass-through entity and auditors to have access to the records and financial statements as necessary for the pass-through entity to comply with this part.

§ __.405 Management decision.

(a) **General.** The management decision shall clearly state whether or not the audit finding is sustained, the reasons for the decision, and the expected auditee action to repay disallowed costs, make financial adjustments, or take other action. If the auditee has not completed corrective action, a timetable for follow-up should be given. Prior to issuing the management decision, the Federal agency or pass-through entity may request additional information or documentation from the auditee, including a request for auditor assurance related to the documentation, as a way of mitigating disallowed costs. The management decision should describe any appeal process available to the auditee.

(b) **Federal agency.** As provided in § __.400(a)(7), the cognizant agency for audit shall be responsible for coordinating a management decision for audit findings that affect the programs of more than one Federal agency. As provided in § __.400(c)(5), a Federal awarding agency is responsible for issuing a management decision for findings that relate to Federal awards it makes to recipients. Alternate arrangements may be made on a case-by-case basis by agreement among the Federal agencies concerned.

(c) **Pass-through entity.** As provided in § __.400(d)(5), the pass-through entity shall be responsible for making the management decision for audit findings that relate to Federal awards it makes to subrecipients.

(d) **Time requirements.** The entity responsible for making the management decision shall do so within six months of receipt of the audit report. Corrective action should be initiated within six months after receipt of the audit report and proceed as rapidly as possible.

(e) **Reference numbers.** Management decisions shall include the reference numbers the auditor assigned to each audit finding in accordance with § __.510(c).

Subpart E--Auditors

§ __.500 Scope of audit.

(a) **General.** The audit shall be conducted in accordance with GAGAS. The audit shall cover the entire operations of the auditee; or, at the option of the auditee, such audit shall include a series of audits that cover departments, agencies, and other organizational units which expended or otherwise administered Federal awards during such fiscal year, provided that each such audit shall encompass the financial statements and schedule of expenditures of Federal awards for each such department, agency, and other organizational unit, which shall be considered to be a non-Federal entity. The financial statements and schedule of expenditures of Federal awards shall be for the same fiscal year.

(b) **Financial statements.** The auditor shall determine whether the financial statements of the auditee are presented fairly in all material respects in conformity with generally accepted accounting principles. The auditor shall also determine whether the schedule of expenditures of Federal awards is presented fairly in all material respects in relation to the auditee's financial statements taken as a whole.

(c) **Internal control.**

(1) In addition to the requirements of GAGAS, the auditor shall perform procedures to obtain an understanding of internal control over Federal programs sufficient to plan the audit to support a low assessed level of control risk for major programs.

(2) Except as provided in paragraph (c)(3) of this section, the auditor shall:

(i) Plan the testing of internal control over major programs to support a low assessed level of control risk for the assertions relevant to the compliance requirements for each major program; and

(ii) Perform testing of internal control as planned in paragraph (c)(2)(i) of this section.

(3) When internal control over some or all of the compliance requirements for a major program are likely to be ineffective in preventing or detecting noncompliance, the planning and performing of testing described in paragraph (c)(2) of this section are not required for those compliance requirements. However, the auditor shall report a reportable condition (including whether any such condition is a material weakness) in accordance with § ____.510, assess the related control risk at the maximum, and consider whether additional compliance tests are required because of ineffective internal control.

(d) **Compliance.**

(1) In addition to the requirements of GAGAS, the auditor shall determine whether the auditee has complied with laws, regulations, and the provisions of

contracts or grant agreements that may have a direct and material effect on each of its major programs.

(2) The principal compliance requirements applicable to most Federal programs and the compliance requirements of the largest Federal programs are included in the compliance supplement.

(3) For the compliance requirements related to Federal programs contained in the compliance supplement, an audit of these compliance requirements will meet the requirements of this part. Where there have been changes to the compliance requirements and the changes are not reflected in the compliance supplement, the auditor shall determine the current compliance requirements and modify the audit procedures accordingly. For those Federal programs not covered in the compliance supplement, the auditor should use the types of compliance requirements contained in the compliance supplement as guidance for identifying the types of compliance requirements to test, and determine the requirements governing the Federal program by reviewing the provisions of contracts and grant agreements and the laws and regulations referred to in such contracts and grant agreements.

(4) The compliance testing shall include tests of transactions and such other auditing procedures necessary to provide the auditor sufficient evidence to support an opinion on compliance.

(e) **Audit follow-up.** The auditor shall follow-up on prior audit findings, perform procedures to assess the reasonableness of the summary schedule of prior audit findings prepared by the auditee in accordance with § __.315(b), and report, as a current year audit finding, when the auditor concludes that the summary schedule of prior audit findings materially misrepresents the status of any prior audit finding. The auditor shall perform audit follow-up procedures regardless of whether a prior audit finding relates to a major program in the current year.

(f) **Data Collection Form.** As required in § __.320(b)(3), the auditor shall complete and sign specified sections of the data collection form.

§ __.505 Audit reporting.

The auditor's report(s) may be in the form of either combined or separate reports and may be organized differently from the manner presented in this section. The auditor's report(s) shall state that the audit was conducted in accordance with this part and include the following:

(a) An opinion (or disclaimer of opinion) as to whether the financial statements are presented fairly in all material respects in conformity with generally accepted accounting principles and an opinion (or disclaimer of opinion) as to whether the schedule of

expenditures of Federal awards is presented fairly in all material respects in relation to the financial statements taken as a whole.

(b) A report on internal control related to the financial statements and major programs. This report shall describe the scope of testing of internal control and the results of the tests, and, where applicable, refer to the separate schedule of findings and questioned costs described in paragraph (d) of this section.

(c) A report on compliance with laws, regulations, and the provisions of contracts or grant agreements, noncompliance with which could have a material effect on the financial statements. This report shall also include an opinion (or disclaimer of opinion) as to whether the auditee complied with laws, regulations, and the provisions of contracts or grant agreements which could have a direct and material effect on each major program, and, where applicable, refer to the separate schedule of findings and questioned costs described in paragraph (d) of this section.

(d) A schedule of findings and questioned costs which shall include the following three components:

(1) A summary of the auditor's results which shall include:

(i) The type of report the auditor issued on the financial statements of the auditee (i.e., unqualified opinion, qualified opinion, adverse opinion, or disclaimer of opinion);

(ii) Where applicable, a statement that reportable conditions in internal control were disclosed by the audit of the financial statements and whether any such conditions were material weaknesses;

(iii) A statement as to whether the audit disclosed any noncompliance which is material to the financial statements of the auditee;

(iv) Where applicable, a statement that reportable conditions in internal control over major programs were disclosed by the audit and whether any such conditions were material weaknesses;

(v) The type of report the auditor issued on compliance for major programs (i.e., unqualified opinion, qualified opinion, adverse opinion, or disclaimer of opinion);

(vi) A statement as to whether the audit disclosed any audit findings which the auditor is required to report under § .510(a);

(vii) An identification of major programs;

(viii) The dollar threshold used to distinguish between Type A and Type B programs, as described in § __.520(b); and

(ix) A statement as to whether the auditee qualified as a low-risk auditee under § __.530.

(2) Findings relating to the financial statements which are required to be reported in accordance with GAGAS.

(3) Findings and questioned costs for Federal awards which shall include audit findings as defined in § __.510(a).

(i) Audit findings (e.g., internal control findings, compliance findings, questioned costs, or fraud) which relate to the same issue should be presented as a single audit finding. Where practical, audit findings should be organized by Federal agency or pass-through entity.

(ii) Audit findings which relate to both the financial statements and Federal awards, as reported under paragraphs (d)(2) and (d)(3) of this section, respectively, should be reported in both sections of the schedule. However, the reporting in one section of the schedule may be in summary form with a reference to a detailed reporting in the other section of the schedule.

§ __.510 Audit findings.

(a) **Audit findings reported.** The auditor shall report the following as audit findings in a schedule of findings and questioned costs:

(1) Reportable conditions in internal control over major programs. The auditor's determination of whether a deficiency in internal control is a reportable condition for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program or an audit objective identified in the compliance supplement. The auditor shall identify reportable conditions which are individually or cumulatively material weaknesses.

(2) Material noncompliance with the provisions of laws, regulations, contracts, or grant agreements related to a major program. The auditor's determination of whether a noncompliance with the provisions of laws, regulations, contracts, or grant agreements is material for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program or an audit objective identified in the compliance supplement.

(3) Known questioned costs which are greater than \$10,000 for a type of compliance requirement for a major program. Known questioned costs are those specifically identified by the auditor. In evaluating the effect of questioned costs

on the opinion on compliance, the auditor considers the best estimate of total costs questioned (likely questioned costs), not just the questioned costs specifically identified (known questioned costs). The auditor shall also report known questioned costs when likely questioned costs are greater than \$10,000 for a type of compliance requirement for a major program. In reporting questioned costs, the auditor shall include information to provide proper perspective for judging the prevalence and consequences of the questioned costs.

(4) Known questioned costs which are greater than \$10,000 for a Federal program which is not audited as a major program. Except for audit follow-up, the auditor is not required under this part to perform audit procedures for such a Federal program; therefore, the auditor will normally not find questioned costs for a program which is not audited as a major program. However, if the auditor does become aware of questioned costs for a Federal program which is not audited as a major program (e.g., as part of audit follow-up or other audit procedures) and the known questioned costs are greater than \$10,000, then the auditor shall report this as an audit finding.

(5) The circumstances concerning why the auditor's report on compliance for major programs is other than an unqualified opinion, unless such circumstances are otherwise reported as audit findings in the schedule of findings and questioned costs for Federal awards.

(6) Known fraud affecting a Federal award, unless such fraud is otherwise reported as an audit finding in the schedule of findings and questioned costs for Federal awards. This paragraph does not require the auditor to make an additional reporting when the auditor confirms that the fraud was reported outside of the auditor's reports under the direct reporting requirements of GAGAS.

(7) Instances where the results of audit follow-up procedures disclosed that the summary schedule of prior audit findings prepared by the auditee in accordance with § __.315(b) materially misrepresents the status of any prior audit finding.

(b) **Audit finding detail.** Audit findings shall be presented in sufficient detail for the auditee to prepare a corrective action plan and take corrective action and for Federal agencies and pass-through entities to arrive at a management decision. The following specific information shall be included, as applicable, in audit findings:

(1) Federal program and specific Federal award identification including the CFDA title and number, Federal award number and year, name of Federal agency, and name of the applicable pass-through entity. When information, such as the CFDA title and number or Federal award number, is not available, the auditor shall provide the best information available to describe the Federal award.

(2) The criteria or specific requirement upon which the audit finding is based, including statutory, regulatory, or other citation.

(3) The condition found, including facts that support the deficiency identified in the audit finding.

(4) Identification of questioned costs and how they were computed.

(5) Information to provide proper perspective for judging the prevalence and consequences of the audit findings, such as whether the audit findings represent an isolated instance or a systemic problem. Where appropriate, instances identified shall be related to the universe and the number of cases examined and be quantified in terms of dollar value.

(6) The possible asserted effect to provide sufficient information to the auditee and Federal agency, or pass-through entity in the case of a subrecipient, to permit them to determine the cause and effect to facilitate prompt and proper corrective action.

(7) Recommendations to prevent future occurrences of the deficiency identified in the audit finding.

(8) Views of responsible officials of the auditee when there is disagreement with the audit findings, to the extent practical.

(c) **Reference numbers.** Each audit finding in the schedule of findings and questioned costs shall include a reference number to allow for easy referencing of the audit findings during follow-up.

§ __.515 Audit working papers.

(a) **Retention of working papers.** The auditor shall retain working papers and reports for a minimum of three years after the date of issuance of the auditor's report(s) to the auditee, unless the auditor is notified in writing by the cognizant agency for audit, oversight agency for audit, or pass-through entity to extend the retention period. When the auditor is aware that the Federal awarding agency, pass-through entity, or auditee is contesting an audit finding, the auditor shall contact the parties contesting the audit finding for guidance prior to destruction of the working papers and reports.

(b) **Access to working papers.** Audit working papers shall be made available upon request to the cognizant or oversight agency for audit or its designee, a Federal agency providing direct or indirect funding, or GAO at the completion of the audit, as part of a quality review, to resolve audit findings, or to carry out oversight responsibilities consistent with the purposes of this part. Access to working papers includes the right of Federal agencies to obtain copies of working papers, as is reasonable and necessary.

§ __.520 Major program determination.

(a) **General.** The auditor shall use a risk-based approach to determine which Federal programs are major programs. This risk-based approach shall include consideration of: Current and prior audit experience, oversight by Federal agencies and pass-through entities, and the inherent risk of the Federal program. The process in paragraphs (b) through (i) of this section shall be followed.

(b) **Step 1.**

(1) The auditor shall identify the larger Federal programs, which shall be labeled Type A programs. Type A programs are defined as Federal programs with Federal awards expended during the audit period exceeding the larger of:

(i) \$300,000 or three percent (.03) of total Federal awards expended in the case of an auditee for which total Federal awards expended equal or exceed \$300,000 but are less than or equal to \$100 million.

(ii) \$3 million or three-tenths of one percent (.003) of total Federal awards expended in the case of an auditee for which total Federal awards expended exceed \$100 million but are less than or equal to \$10 billion.

(iii) \$30 million or 15 hundredths of one percent (.0015) of total Federal awards expended in the case of an auditee for which total Federal awards expended exceed \$10 billion.

(2) Federal programs not labeled Type A under paragraph (b)(1) of this section shall be labeled Type B programs.

(3) The inclusion of large loan and loan guarantees (loans) should not result in the exclusion of other programs as Type A programs. When a Federal program providing loans significantly affects the number or size of Type A programs, the auditor shall consider this Federal program as a Type A program and exclude its values in determining other Type A programs.

(4) For biennial audits permitted under § __.220, the determination of Type A and Type B programs shall be based upon the Federal awards expended during the two-year period.

(c) **Step 2.**

(1) The auditor shall identify Type A programs which are low-risk. For a Type A program to be considered low-risk, it shall have been audited as a major program in at least one of the two most recent audit periods (in the most recent audit period in the case of a biennial audit), and, in the most recent audit period, it shall have had no audit findings under § __.510(a). However, the auditor may use judgment and consider that audit findings from questioned costs under § __.510(a)(3) and § __.510(a)(4), fraud under § __.510(a)(6), and audit follow-up for the summary

schedule of prior audit findings under § ____.510(a)(7) do not preclude the Type A program from being low-risk. The auditor shall consider: the criteria in § ____.525(c), § ____.525(d)(1), § ____.525(d)(2), and § ____.525(d)(3); the results of audit follow-up; whether any changes in personnel or systems affecting a Type A program have significantly increased risk; and apply professional judgment in determining whether a Type A program is low-risk.

(2) Notwithstanding paragraph (c)(1) of this section, OMB may approve a Federal awarding agency's request that a Type A program at certain recipients may not be considered low-risk. For example, it may be necessary for a large Type A program to be audited as major each year at particular recipients to allow the Federal agency to comply with the Government Management Reform Act of 1994 (31 U.S.C. 3515). The Federal agency shall notify the recipient and, if known, the auditor at least 180 days prior to the end of the fiscal year to be audited of OMB's approval.

(d) Step 3.

(1) The auditor shall identify Type B programs which are high-risk using professional judgment and the criteria in § ____.525. However, should the auditor select Option 2 under Step 4 (paragraph (e)(2)(i)(B) of this section), the auditor is not required to identify more high-risk Type B programs than the number of low-risk Type A programs. Except for known reportable conditions in internal control or compliance problems as discussed in § ____.525(b)(1), § ____.525(b)(2), and § ____.525(c)(1), a single criteria in § ____.525 would seldom cause a Type B program to be considered high-risk.

(2) The auditor is not expected to perform risk assessments on relatively small Federal programs. Therefore, the auditor is only required to perform risk assessments on Type B programs that exceed the larger of:

(i) \$100,000 or three-tenths of one percent (.003) of total Federal awards expended when the auditee has less than or equal to \$100 million in total Federal awards expended.

(ii) \$300,000 or three-hundredths of one percent (.0003) of total Federal awards expended when the auditee has more than \$100 million in total Federal awards expended.

(e) Step 4. At a minimum, the auditor shall audit all of the following as major programs:

(1) All Type A programs, except the auditor may exclude any Type A programs identified as low-risk under Step 2 (paragraph (c)(1) of this section).

(2) (i) High-risk Type B programs as identified under either of the following two options:

(A) **Option 1.** At least one half of the Type B programs identified as high-risk under Step 3 (paragraph (d) of this section), except this paragraph (e)(2)(i)(A) does not require the auditor to audit more high-risk Type B programs than the number of low-risk Type A programs identified as low-risk under Step 2.

(B) **Option 2.** One high-risk Type B program for each Type A program identified as low-risk under Step 2.

(ii) When identifying which high-risk Type B programs to audit as major under either Option 1 or 2 in paragraph (e)(2)(i)(A) or (B), the auditor is encouraged to use an approach which provides an opportunity for different high-risk Type B programs to be audited as major over a period of time.

(3) Such additional programs as may be necessary to comply with the percentage of coverage rule discussed in paragraph (f) of this section. This paragraph (e)(3) may require the auditor to audit more programs as major than the number of Type A programs.

(f) **Percentage of coverage rule.** The auditor shall audit as major programs Federal programs with Federal awards expended that, in the aggregate, encompass at least 50 percent of total Federal awards expended. If the auditee meets the criteria in § __.530 for a low-risk auditee, the auditor need only audit as major programs Federal programs with Federal awards expended that, in the aggregate, encompass at least 25 percent of total Federal awards expended.

(g) **Documentation of risk.** The auditor shall document in the working papers the risk analysis process used in determining major programs.

(h) **Auditor's judgment.** When the major program determination was performed and documented in accordance with this part, the auditor's judgment in applying the risk-based approach to determine major programs shall be presumed correct. Challenges by Federal agencies and pass-through entities shall only be for clearly improper use of the guidance in this part. However, Federal agencies and pass-through entities may provide auditors guidance about the risk of a particular Federal program and the auditor shall consider this guidance in determining major programs in audits not yet completed.

(i) **Deviation from use of risk criteria.** For first-year audits, the auditor may elect to determine major programs as all Type A programs plus any Type B programs as necessary to meet the percentage of coverage rule discussed in paragraph (f) of this section. Under this option, the auditor would not be required to perform the procedures discussed in paragraphs (c), (d), and (e) of this section.

(1) A first-year audit is the first year the entity is audited under this part or the first year of a change of auditors.

(2) To ensure that a frequent change of auditors would not preclude audit of high-risk Type B programs, this election for first-year audits may not be used by an auditee more than once in every three years.

§ __.525 Criteria for Federal program risk.

(a) **General.** The auditor's determination should be based on an overall evaluation of the risk of noncompliance occurring which could be material to the Federal program. The auditor shall use auditor judgment and consider criteria, such as described in paragraphs **(b)**, **(c)**, and **(d)** of this section, to identify risk in Federal programs. Also, as part of the risk analysis, the auditor may wish to discuss a particular Federal program with auditee management and the Federal agency or pass-through entity.

(b) Current and prior audit experience.

(1) Weaknesses in internal control over Federal programs would indicate higher risk. Consideration should be given to the control environment over Federal programs and such factors as the expectation of management's adherence to applicable laws and regulations and the provisions of contracts and grant agreements and the competence and experience of personnel who administer the Federal programs.

(i) A Federal program administered under multiple internal control structures may have higher risk. When assessing risk in a large single audit, the auditor shall consider whether weaknesses are isolated in a single operating unit (e.g., one college campus) or pervasive throughout the entity.

(ii) When significant parts of a Federal program are passed through to subrecipients, a weak system for monitoring subrecipients would indicate higher risk.

(iii) The extent to which computer processing is used to administer Federal programs, as well as the complexity of that processing, should be considered by the auditor in assessing risk. New and recently modified computer systems may also indicate risk.

(2) Prior audit findings would indicate higher risk, particularly when the situations identified in the audit findings could have a significant impact on a Federal program or have not been corrected.

(3) Federal programs not recently audited as major programs may be of higher risk than Federal programs recently audited as major programs without audit findings.

(c) Oversight exercised by Federal agencies and pass-through entities.

(1) Oversight exercised by Federal agencies or pass-through entities could indicate risk. For example, recent monitoring or other reviews performed by an oversight entity which disclosed no significant problems would indicate lower risk. However, monitoring which disclosed significant problems would indicate higher risk.

(2) Federal agencies, with the concurrence of OMB, may identify Federal programs which are higher risk. OMB plans to provide this identification in the compliance supplement.

(d) Inherent risk of the Federal program.

(1) The nature of a Federal program may indicate risk. Consideration should be given to the complexity of the program and the extent to which the Federal program contracts for goods and services. For example, Federal programs that disburse funds through third party contracts or have eligibility criteria may be of higher risk. Federal programs primarily involving staff payroll costs may have a high-risk for time and effort reporting, but otherwise be at low-risk.

(2) The phase of a Federal program in its life cycle at the Federal agency may indicate risk. For example, a new Federal program with new or interim regulations may have higher risk than an established program with time-tested regulations. Also, significant changes in Federal programs, laws, regulations, or the provisions of contracts or grant agreements may increase risk.

(3) The phase of a Federal program in its life cycle at the auditee may indicate risk. For example, during the first and last years that an auditee participates in a Federal program, the risk may be higher due to start-up or closeout of program activities and staff.

(4) Type B programs with larger Federal awards expended would be of higher risk than programs with substantially smaller Federal awards expended.

§ __.530 Criteria for a low-risk auditee.

An auditee which meets all of the following conditions for each of the preceding two years (or, in the case of biennial audits, preceding two audit periods) shall qualify as a low-risk auditee and be eligible for reduced audit coverage in accordance with § __.520:

(a) Single audits were performed on an annual basis in accordance with the provisions of this part. A non-Federal entity that has biennial audits does not qualify as a low-risk auditee, unless agreed to in advance by the cognizant or oversight agency for audit.

(b) The auditor's opinions on the financial statements and the schedule of expenditures of Federal awards were unqualified. However, the cognizant or oversight agency for audit may judge that an opinion qualification does not affect the management of Federal awards and provide a waiver.

(c) There were no deficiencies in internal control which were identified as material weaknesses under the requirements of GAGAS. However, the cognizant or oversight agency for audit may judge that any identified material weaknesses do not affect the management of Federal awards and provide a waiver.

(d) None of the Federal programs had audit findings from any of the following in either of the preceding two years (or, in the case of biennial audits, preceding two audit periods) in which they were classified as Type A programs:

(1) Internal control deficiencies which were identified as material weaknesses;

(2) Noncompliance with the provisions of laws, regulations, contracts, or grant agreements which have a material effect on the Type A program; or(3) Known or likely questioned costs that exceed five percent of the total Federal awards expended for a Type A program during the year.

Appendix A to Part ___ - Data Collection Form (Form SF-SAC)

Appendix B to Part ___ - Circular A-133 Compliance Supplement

LIST OF FORMS AND WEB LINKS

Form	Form Title	Link
SF 269	Financial Status Report (long form)	www.whitehouse.gov/omb/grants/sf269.pdf
SF 269A	Financial Status Report (short form)	www.whitehouse.gov/omb/grants/sf269a.pdf
SF 270	Request for Advance or Reimbursement	www.whitehouse.gov/omb/grants/sf270.pdf
SF 272	Federal Cash Transaction Report	www.whitehouse.gov/omb/grants/sf272a.pdf
SF 424	Application for Federal Assistance	www.nps.gov/ncrc/programs/uprr/stanfms/sf424-f.pdf
SF-SAC	Data Collection Form for Reporting on Audits of States, Local Governments, and Non- Profit Organizations	http://harvester.census.gov/fac/collect/sfsac_2004.pdf

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