Department of Commerce Grants and Cooperative Agreements Manual

Grants and Cooperative Agreements Manual

OAM/GMD

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

Contents

1. PREFACE 1-5
2. INTRODUCTION 2-8
   - A. Purpose 2-8
   - B. Authority 2-8
   - C. Coverage 2-8
   - D. Effect on Other Issuances 2-8
   - E. Government-Wide Requirements Used in the Administration of DOC Awards 2-8
3. GLOSSARY OF TERMS AND ACRONYMS 3-11
   - A. Definitions 3-11
   - B. Abbreviations 3-14
4. RESPONSIBILITIES IN GRANTS ADMINISTRATION 4-16
   - A. Chief Financial Officer and Assistant Secretary for Administration 4-16
   - B. Office of Acquisition Management (OAM) 4-16
   - C. Office of General Counsel 4-18
   - D. Office of Inspector General 4-21
   - E. Finance and Budget Office 4-22
   - F. Grants Office 4-23
   - G. Liaison Responsibilities 4-26
   - H. Program Office 4-27
   - I. Property Management Office 4-30
5. RELATIONSHIPS WITH OUTSIDE ENTITIES 5-31
   - A. Overview 5-31
   - B. Grants 5-31
   - C. Cooperative Agreements 5-31
   - D. Procurement Contracts 5-33
   - E. Other Types of Agreements 5-33
6. TYPES OF FINANCIAL ASSISTANCE FUNDS AND AWARDS 6-35
   - A. Discretionary Funds 6-35
   - B. Nondiscretionary Funds 6-36

7. TYPES OF APPLICATIONS 7-37
A. Pre-applications 7-37
B. Competitive Applications 7-37
C. Noncompetitive Applications 7-38
D. Supplemental Applications 7-39
8. MERIT REVIEW, SELECTION, APPROVAL, AND NOTIFICATION PROCEDURES 8-40
A. Overview 8-40
B. Review Standards 8-40
C. Evaluation and Selection Requirements for Competition 8-42
D. Review Process for Applications for Competitive Awards 8-44
E. Review Process for Applications for Institutional Awards 8-45
F. Review Process for Applications for Noncompetitive Awards Made with Discretionary Funds 8-45
G. Review Process for Applications for Awards Mandated or Limited by Statute 8-47
H. Congressional Notification 8-47
I. Obligation of Funds 8-48
J. Notice to Applicants 8-48
9. PRE-AWARD ADMINISTRATIVE REQUIREMENTS 9-49
A. Application Package 9-49
B. Recommendation for Funding 9-50
C. Budget Analysis 9-51
D. Costs 9-51
E. Executive Order (E.O.) 12372 (Intergovernmental Review of Federal Programs) 9-53
F. Applicant's Management and Financial Capabilities 9-53
G. Review of Recipient's Risk 9-54
H. Awards to Insular Areas 9-55
I. Preparation of Financial Assistance Award 9-55
10. POST AWARD ADMINISTRATION REQUIREMENTS 10-58
A. Official Award File 10-58
B. USASpending.gov 10-60
C. Costs under DOC Awards 10-60
D. Amendments 10-61
E. Project Monitoring 10-61
F. Recipient Responsibilities 10-61
11. ENFORCEMENT 11-63

A. Overview 11-63
B. Enforcement 11-63
C. Concurrent Actions 11-65
12. AWARD CLOSE-OUT 12-67
A. Responsibilities 12-67
B. Unobligated Funds 12-67
C. Deobligation of Funds 12-67
D. Retention of Records 12-67
E. Unilateral Termination and/or Administrative Closeout 12-68
Appendix A: Sample Business Official's Notice to Submit Documentation 12-70
Appendix B: Sample Missing Data Report and Due Diligence Checklist 12-72
Appendix C: Sample Unilateral Termination and/or Unilateral Closeout Memorandum 12-74
13. AUDITS 13-75
A. Audit Requirements 13-75
B. Other Audits 13-75
C. Access to Recipient Records 13-76
D. Audit Resolution 13-76
E. Audit Implementation 13-77
14. ESTABLISHMENT AND COLLECTION OF FINANCIAL ASSISTANCE-RELATED DEBTS 14-78
A. Standards for the Establishment and Collection of Debts 14-78
B. Establishment of a Debt 14-78
C. Debt Collection 14-79
D. Impact of Delinquent Federal Debts on Award Eligibility 14-80
E. Exceptions 14-82
Exhibit A – Sample Notice and Demand Letter/Audit Resolution Determination 14-83
15. GRANTS ADMINISTRATION POLICIES AND REQUIREMENTS 15-88
A. Anti-Deficiency Act 15-88
B. *Bona Fide* Needs Rule 15-88
C. Conflicts of Interest 15-88
D. Consulting Services 15-89
E. Coordination with DOC and Other Federal Agencies 15-89
F. DOC Forms 15-90
G. Freedom of Information Act (FOIA) 15-90
H. Management and Institutional Grant Reviews 15-90

I. Privacy Act 15-91
J. Recipient Name Change 15-91
K. Requests for Prior Approval 15-91
L. Statutory Authority 15-91
M. Transfer of Award 15-91
N. Transfer of Funds 15-93
O. Waivers and Deviations 15-93
16. CONSTRUCTION AWARDS 16-94
A. Purpose. 16-94
B. Authority 16-94
C. Scope of Chapter 16-94
D. Policy 16-94
E. General Requirements 16-95
F. Disbursement of Grant Funds and Financial Administration 16-106
G. Award Amendments 16-107
H. Post-Construction Requirements 16-109
Appendix A: Applicable Regulations, OMB Circulars and Agency-specific Guidance 16-114
Exhibit A: Sample Mortgage Cover Letter 16-116
Exhibit B: Sample Mortgage 16-117
Exhibit C: Sample Covenant Cover Letter 16-122
Exhibit D: Sample Covenant 16-123
17. GUIDELINES FOR THE PREPARATION OF PUBLIC NOTICES ANNOUNCING THE AVAILABILITY OF FINANCIAL ASSISTANCE: FEDERAL FUNDING OPPORTUNITY (FFO) ANNOUNCEMENTS AND *FEDERAL REGISTER* NOTICES 17-128
A. Background 17-128
B. Format of FFO 17-128
C. Publication in the *Federal Register* 17-138
D. *Federal Register* Format Requirements 17-139
E. Coordination and Clearance 17-142
18. MULTI-YEAR FUNDING PROCEDURES 18-143
A. General 18-143
B. Multi-Year Awards 18-143
C. Multi-Year Funding Principles 18-143
D. Preparation of New Award 18-145
E. Preparation of Amendment(s) 18-145

1. PREFACE

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

B. DOC may award Federal financial assistance (e.g., a grant or cooperative agreement) when authorized by law. While Federal agencies generally have "inherent" authority to enter into contracts to procure goods or services for their own use, there is no comparable inherent authority to enter into financial assistance relationships. Therefore, the relevant legislation must be studied to determine whether a financial assistance relationship is authorized at all, and if so, under what circumstances and conditions. There is no general Department-wide financial assistance authority and the Federal Grant and Cooperative Agreement Act of 1977 (31 U.S.C. §§ 6301-6308), in and of itself, does not provide such authority.[1] Such authority must be provided by specific statute. The operating unit's basic legislation must be analyzed to determine whether an assistance relationship is authorized, and if so, under what circumstances and conditions. The following operating units are authorized to provide financial assistance:

1. Census. Census provides cooperative agreements to make awards to, or conclude cooperative agreements with appropriate entities, including any Federal, State, or local governmental unit, or institution of higher education, to aid and promote statistical, research, and methodology activities related to the Census Bureau mission under Title 13 of the United States Code. Awards provided under this notice support the Census Bureau and the Dept. of Commerce by: (1) developing and analyzing information for program and policy considerations; and, (2) undertaking special research.

2. Economic Development Administration (EDA). EDA leads the federal economic development agenda by promoting innovation and competitiveness, preparing American regions for growth and success in the worldwide economy. EDA investment assistance is available to rural and urban areas of the Nation experiencing or threatened with substantial economic distress, including high levels of unemployment, low income levels, significant declines in per-capita income, sudden major lay-offs or plant closures, or natural or other major disasters. EDA works in partnership with eligible applicants, including State and local governments, district organizations, public or private non-profit organizations, Indian tribes, and institutions of higher education.

[1] The Federal Grant and Cooperative Agreement Act is designed to ensure that agencies use the legal instrument that suits the intended and authorized relationship (e.g., a contract when an agency is purchasing goods or services for the agency's direct benefit or use; a grant to support a recipient in carrying out a public purpose of support or stimulation authorized by a law).

3. International Trade Administration (ITA). ITA is responsible for most non-agricultural U.S. trade issues and works with the Office of the U.S. Trade Representative in coordinating U.S. trade policy. ITA operates through four principal units: Market Access and Compliance, Trade Development, Import Administration, and U.S. and Foreign Commercial Service. ITA provides grants and cooperative agreements through several programs to promote trade, investment, and commercial relations, and maintains comprehensive commercial and economic data on particular countries and regions of the world. ITA grant and cooperative agreement programs are also intended to strengthen domestic export competitiveness, and promote U.S. industry's increased participation in international markets.

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

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

6. National Oceanic and Atmospheric Administration (NOAA). NOAA is a federal agency focused on the condition of the oceans and the atmosphere. Through grants and cooperative agreements, NOAA plays several distinct roles within DOC – supplier of environmental information products, provider of environmental stewardship services and leader in applied scientific research.

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

a. First Responder Network Authority (FirstNet). As described in the Middle Class Tax Relief and Job Creation Act of 2012, 47 U.S.C. §§ 1401-1473, FirstNet holds a single, nationwide Federal Communications Commission (FCC) license to use Band 14 spectrum frequencies for the purposes of developing, building and operating the Nationwide Public Safety Broadband Network (NPSBN) and awards grants to assist eligible state, county and municipal public safety entities (incumbents) in relocating their currently active communication operations from Band 14 to other frequency assignments allocated by the FCC.

C. The DOC administers a diverse array of programs and projects concerned with the entire spectrum of business and economic development concerns as outlined above. Departmental operating units and Grants Offices are responsible for the award, administration, and monitoring of these programs under a variety of legislative authorities, governing regulations, policies, and procedures using

mandatory and discretionary grants and cooperative agreements. Awards are made to a wide variety of recipients, including state and local governments, for-profit or commercial organizations, non-profit organizations, and educational institutions. The administration of DOC grant and cooperative agreement programs requires adherence not only to the program objectives for which funds are awarded, but also to sound business practices, as well as laws, regulations, policies, and procedures governing grants and cooperative agreements.

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

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

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

G. Questions concerning this manual should be directed to the cognizant Grants Officer or the Director, Grants Management Division, Office of Acquisition Management, U.S. Department of Commerce, Room 1854, Washington, D.C. 20230, telephone number: (202) 482-0602.

2. INTRODUCTION

A. Purpose

This Manual sets forth DOC guidance on Federal award administration and provides DOC with a uniform set of minimum procedures to govern the award lifecycle, from the requirements for announcing the availability of Federal funding, including Federal Funding Opportunities (FFOs) and requests for applications (RFAs), to reviewing, awarding, managing, and closing out awards. The Manual references policies and procedures for use by DOC offices and operating units for ensuring the consistent implementation of legislation, regulations, Office of Management and Budget (OMB) circulars, executive orders (EOs), and Departmental policies and procedures related to financial assistance. The Manual is for internal use by DOC personnel and does not create any rights or liabilities with respect to the public or any third party. It is to be used by operating units, Grants Offices, and all involved in the Federal award lifecycle. This Manual is maintained by the Grants Management Division within the Office of Acquisition Management.

B. Authority

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

C. Coverage

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

D. Effect on Other Issuances

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

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

As a condition of receiving Federal financial assistance awards, DOC enforces recipient compliance through government-wide requirements. Operating units, recipients and subrecipients shall administer

all DOC financial assistance awards in accordance with applicable statutes, regulations, EOs, and OMB circulars that may be attached to the expenditure of Federal funds. A list of requirements includes, but is not limited to the following:

1. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards codified at 2 CFR Part 200 (Uniform Guidance).

a. In accordance with the Federal Register notice published on December 19, 2014 (79 FR 75871) and the regulation at 2 CFR § 1327.101, effective December 26, 2014, the DOC adopted the Uniform Guidance. The Uniform Guidance streamlines the language from eight OMB circulars, including cost principles (OMB Circulars A-21, A-87, A-122), administrative requirements (OMB Circulars A-102 and A-110), and audit requirements (OMB Circulars A-50 and A-133), into one consolidated set of guidance applicable to Federal financial assistance awards. For awards made on or after December 26, 2014, the Uniform Guidance supersedes DOC's uniform administrative requirements set out at 15 CFR Parts 14 and 24.

2. Contract Cost Principles and Procedures (48 CFR Part 31).

a. The Uniform Guidance supersedes cost principles set out in OMB Circulars and codified at 2 CFR Parts 220, 225, and 230, but does not supersede the Contract Cost Principles, which generally apply to for-profit entities. At 2 CFR § 200.101(c), the Uniform Guidance provides that agencies may, but are not required to, apply Subparts A through E of 2 CFR Part 200, which include the cost principles at Subpart E, to for-profit entities. Therefore, the Grants Officer in consultation with the Program Office may elect to apply the cost principles under the Uniform Guidance (*see* Subpart E to 2 CFR Part 200) or the Contract Cost Principles when making an award to a for-profit entity.

3. Other Requirements.

a. OMB Circular A-50 Revised (Audit Follow-Up), except as superseded by 2 CFR Part 200 (*see* 2 CFR § 200.104 (Supersession));
b. OMB Circular A-129 Revised (Policies for Federal Credit Programs and Non-Tax Receivables);
c. 2 CFR Part 1326 (Nonprocurement Debarment and Suspension);
d. 2 CFR Part 1329 (Governmentwide Requirements for Drug-Free Workplace (Financial Assistance));
e. 5 CFR Part 1320 (Controlling Paperwork Burdens on the Public);
f. 15 CFR Part 8 (Nondiscrimination in Federally Assisted Programs of the Department of Commerce – Effectuation of Title VI of the Civil Rights Act of 1964);
g. 15 CFR Part 8a (Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance);
h. 15 CFR Part 8b (Prohibition of Discrimination Against the Handicapped in Federally Assisted Programs Operated by the Department of Commerce);
i. 15 CFR Part 11 (Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs);
j. 2 CFR Part 200, Appendix 1, D.5 (Intergovernmental Review);
k. 15 CFR Part 20 (Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance);
l. 15 CFR Part 19 (Commerce Debt Collection);

m. 15 CFR Part 25 (Program Fraud Civil Remedies);
n. 15 CFR Part 27 (Protection of Human Subjects);
o. 15 CFR Part 28 (New Restrictions on Lobbying);
p. 15 CFR Part 273 (Metric Conversion Policy for Federal Agencies);
q. 31 CFR Part 223 (Surety Companies Doing Business with the United States);
r. 31 CFR Part 900-904 (Federal Claims Collection Standards);
s. 37 CFR Part 401 (Rights to Inventions Made by Nonprofit Organizations and Small Business Firms under Government Grants, Contracts, and Cooperative Agreements);
t. EO 13653 (Nov 1, 2013, Preparing the United States for the Impacts of Climate Change);
u. EO 13693 (Mar 19, 2015, Planning for Federal Sustainability in the Next Decade);
v. EO's 12549 and 12689 (Debarment and Suspension); and
w. Assurances contained in OMB Standard Forms: Form SF-424B (Assurances – Non-Construction Programs) and Form SF-424D (Assurances – Construction Programs), which reference laws and regulations that may apply to particular awards.

4. DOC Standard Terms and Conditions (ST&Cs). The ST&Cs list all applicable statutes, regulations, EOs, OMB circulars, provisions of the Uniform Guidance, any other incorporated terms and conditions, and approved applications. The ST&Cs generally apply to DOC financial assistance awards and a recipient receiving a DOC financial assistance award must comply and require each of its subrecipients employed in the completion of the project to comply with the ST&Cs.

5. Order of Precedence. The following is the order of legal precedence for grants and cooperative agreements. There should be no conflicting guidance but, in the event of a discrepancy, the order of precedence for DOC grants and program officials is listed in descending order: public laws, regulations, applicable notices published in the Federal Register, EOs, OMB circulars, DOC ST&Cs, operating unit standard award conditions (if any), and special award conditions.

[**Note:** Special Award Conditions may take precedence over DOC ST&Cs, on a case-by-case basis, when allowed by the ST&Cs, statute, or regulation.]

[**Note:** An annual appropriation act can include general provisions stating national policy requirements that apply to the use of financial assistance funds appropriated by the act. Because these requirements can be of limited duration and because they can vary from year to year and from one agency's appropriations act to another agency's appropriations, the Grants Officer must know the agency or agencies and fiscal year(s) of the appropriation being obligated and may need to consult the FALD or the Budget Office if the requirements applicable to those appropriations are unknown.]

[**Note:** DOC or individual operating units may adopt further requirements and policies related to research involving human subjects.]

3. GLOSSARY OF TERMS AND ACRONYMS

Refer to the Uniform Guidance, Subpart A (Acronyms and Definitions) for an expanded record of definitions and acronyms used in the Federal financial assistance community.

A. Definitions

1. **Administrative Offset.** Satisfying a debt by withholding funds payable by the United States (including funds payable by the United States on behalf of a state government) to, or held by the United States for, a person to satisfy a debt owed by the person. The term "administrative offset" can include, but is not limited to, the offset of Federal salary, vendor, retirement, and Social Security benefit payments. The terms "centralized administrative offset" and "centralized offset" refer to the process by which the Treasury Department's Financial Management Service offsets Federal payments through the Treasury Offset Program.

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

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

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

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

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

7. **Continuation.** An amendment that provides continued funding within the approved project period. Unlike a renewal, a continuation does not extend the project period; rather, it provides additional funding within an already existing project period. Continuation amendments are used with multi-year awards.

8. **Delinquent Debt**. A debt that has not been paid by the date specified in the agency's initial written demand for payment or applicable agreement or instrument (including a post-delinquency payment agreement) unless other satisfactory payment arrangements have been made.

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

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

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

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

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

14. **Grants.gov.** The official Federal government website that allows organizations to electronically find and apply for Federal financial assistance.

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

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

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

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

19. **Interested Party.** Any officer, employee or member of the board of directors or other governing board of a non-Federal entity, including any other parties that advise, approve, recommend, or otherwise participate in the business decisions of the recipient, such as agents, advisors, consultants,

attorneys, accountants or shareholders. This also includes immediate family and other persons directly connected to the Interested Party by law or through a business arrangement.

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

21. **Multi-year Award.** A financial assistance award which has a period of performance of more than 12 months, which is partially funded as of the award date, and is subsequently funded in increments. This does not include awards with a period of performance of more than 12 months which are fully funded as of the award date.

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

23. **No-Cost Extension.** An amendment that extends the period of performance and funding period with no additional funding.

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

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

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

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

28. **Pre-Award Period.** The approved period of time allotted to the award prior to the beginning of the period of performance as listed on the Form CD-450 (Financial Assistance Award).

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

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

31. **Revolving Loan Fund**. Established in 1975 to create and retain jobs in distressed communities, the EDA Revolving Loan Fund (RLF) provides competitive grants to eligible recipients to start or recapitalize local RLF's. Those RLFs in turn provide gap financing at competitive rates to borrowers otherwise unable to access affordable capital. Eligible uses include real estate, equipment, fixed assets, and working capital.

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

33. **System for Award Management Exclusions (SAM Exclusions)**. A widely available source of the most current information about persons who are excluded or disqualified from covered transactions. The General Services Administration (GSA) maintains SAM Exclusions. 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 SAM Exclusions. SAM Exclusions had previously been known as the Excluded Parties List System (EPLS).

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

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

36. **Suspension of Award.** An enforcement action to temporarily suspend Federal sponsorship (as opposed to suspension of payments) under the award pending corrective action by the non-Federal entity or a decision to terminate the award. All activities under the award must cease and no costs may be incurred by the recipient during the suspension of award, unless the Federal awarding agency or pass-through entity expressly authorizes them in the notice of suspension or subsequently.

37. **Suspension of Payment.** An action to temporarily withhold payment of funds under the award pending correction of identified deficiencies by the non-Federal entity. Activities under the award may continue and the non-Federal entity may continue to incur costs during the suspension of payment.

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

B. Abbreviations

AGC/ADTRAX – Office of the Assistant General Counsel for Administration and Transactions
AGC/L&R – Assistant General Counsel for Legislation and Regulation, DOC
ASAP – Automated Standardized Application for Payment
BAA – Broad Agency Announcement
CAIVERS – Credit Alert Interactive Voice Response System
CENSUS – U.S. Census Bureau, Operating Unit of DOC
CFDA – Catalog of Federal Domestic Assistance
CFO/ASA – Chief Financial Officer and Assistant Secretary for Administration
CFR – Code of Federal Regulations
CRADA – Cooperative Research and Development Agreement
DAO - Department Administrative Order, DOC
DOC - Department of Commerce

DOO - Department Organization Order, DOC
EDA - Economic Development Administration, Operating Unit of DOC
EO - Executive Order, White House
EPLS – Excluded Parties List System. The EPLS is now referred to as "SAM Exclusions" and incorporated into the System for Award Management (SAM)
FALD - Federal Assistance Law Division, DOC
FBO - FedBizOpps (Federal Business Opportunities)
FFATA – Federal Funding Accountability and Transparency Act of 2006 or Transparency Act (Pub. L. No. 109-282, as amended by section 6202(a) of Pub. L. No. 110-252 (31 U.S.C. § 6101)
FFO – Federal Funding Opportunity
FirstNet – First Responder Network Authority
FOIA - Freedom of Information Act
GAO – Government Accountability Office
GSA - General Services Administration
ITA - International Trade Administration, Operating Unit of DOC
MBDA - Minority Business Development Agency, Operating Unit of DOC
MOU - Memorandum of Understanding
NIST - National Institute of Standards and Technology, Operating Unit of DOC
NOAA - National Oceanic and Atmospheric Administration, Operating Unit of DOC
NTIA - National Telecommunications and Information Administration, Operating Unit of DOC
OCA - Office of Congressional Affairs, DOC
OAM - Office of Acquisition Management, DOC
OGC - Office of General Counsel, DOC
OIG - Office of Inspector General, DOC
OLIA - Office of Legislative and Intergovernmental Affairs, DOC
OMB - Office of Management and Budget, White House
PA - Privacy Act
PRA - Paperwork Reduction Act
RFA - Request for Applications
RIN - Regulation Identification Number
SAM - System for Award Management
SPOC - Single Point of Contact
ST&Cs - DOC Financial Assistance Standard Terms and Conditions
TOP - Treasury Offset Program
U.S.C. - United States Code

4. RESPONSIBILITIES IN GRANTS ADMINISTRATION

A. Chief Financial Officer and Assistant Secretary for Administration

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

[**Note**: Under DOO 10-4 (Assistant Secretary for Economic Development) EDA has been delegated authority by the Secretary of Commerce to administer the Public Works and Economic Development Act and pertinent provisions of the Trade Act and the America Creating Opportunities to Meaningfully Promote Excellence in Technology, Education, and Science (COMPETES) Reauthorization Act of 2010, among other matters. This includes grants administration for such programs. In addition, NIST and NOAA are delegated through DOOs 30-2A (National Institute of Standards and Technology) and 10-15 (Under Secretary of Commerce for Oceans and Atmosphere and Administrator of the National Oceanic and Atmospheric Administration) respectively, the authority to perform functions in the Federal Grant and Cooperative Agreement Act, 31 U.S.C. §§ 6301-08 with regard to making grants and cooperative agreements.]

2. The CFO/ASA hereby delegates to the Grants Officer the authority to approve exceptions to awards subject to the provisions of 2 CFR § 200.102 (Exceptions).

[**Note**: This delegation of authority may not be re-delegated by the Grants Officer.]

B. Office of Acquisition Management (OAM)

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

The following functions will be performed by GMD:

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

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

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

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

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

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

7. Develop reports on implementation activities of procurement and financial assistance audit recommendations as necessary for reporting to Congress by the Secretary of Commerce.

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

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

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

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

12. Convene Department-wide Grants Council meetings.

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

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

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

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

d. Other documents as appropriate.

14. Coordinate with the appropriate Grants Officers, program offices and the Federal Assistance Law Division (FALD), within the Office of the Assistant General Counsel for Administration and Transactions (AGC/ADTRAX), on the establishment of program numbers and updating of text and financial assistance information in the Catalog of Federal Domestic Assistance (CFDA).

C. Office of General Counsel

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

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

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

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

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

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

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

(4) Legal advice and services to the Debt Workout Groups in accordance with the DOC *Credit and Debt Management Operating Standards and Procedures Handbook*, which currently may be located on the DOC website at http://www.osec.doc.gov/ofm/credit/cover.html. This includes assistance with final terminations, settlements, compromises of claims, and referrals of claims to the Department of Justice for collection. The General Litigation Division (Gen Lit), within AGC/LEO, also provides legal advice and services relative to debt workout, debt collection, and bankruptcy. In addition, the Real Property and Environmental Law Division (RPELD), within AGC/ADTRAX is

available for consultation regarding property and environmental concerns laws (e.g., the National Environmental Policy Act of 1969 and state analogs, and the Comprehensive Environmental Response, Compensation and Liability Act of 1980). Coordination with Gen Lit and RPELD may be pursued directly by Program Officials or Grants Officers, or may be coordinated through FALD.

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

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

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

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

c. Audit appeal determinations under DAO 213-5 (Audit Resolution and Follow-Up) are submitted to FALD for review and recommendation before clearance by the AGC/ADTRAX.

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

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

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

c. Proposed financial assistance competitive awards where the amount of Federal funding exceeds the simplified acquisition threshold, which is currently $150,000, and all noncompetitive awards, *see also* 41 U.S.C. § 134 (the simplified acquisition threshold). This includes all amendments that accumulate to more than $150,000 in total award funding or add or change the scope of work. OGC will consider requests to raise the $150,000 threshold for legal review of competitive awards on a program-by-program basis, with the concurrence of the program office, for on-going programs that have not had significant legal issues or audit problems in the past three years. OGC will also consider requests to change the requirement for legal review of all continuation amendments under multi-year awards, as well as review of individual amendments to institutional awards that are under the simplified acquisition threshold, but where the underlying award totals more than $150,000, as appropriate. Grants Officers may submit a written request setting forth a justification for raising the threshold to the FALD Chief, or FALD staff may recommend a waiver to the FALD

Chief, who may provide written approval of such a request when warranted. Contact FALD for further information;

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

[**Note**: When DOC provides Federal funds to another Federal agency that is administering a collaborative project with the Department, the agreement governing that transfer of funds must stipulate that DOC funds shall not be used to pay for management fees in excess of costs or profits in a financial assistance award, unless statutorily authorized. *See* Chapter 9 of this Manual.]

e. Pre- and post-award risk assessments resulting in the imposition of additional specific award conditions pursuant to 2 CFR §§ 200.205 (Federal awarding agency review of risk posed by applicants) and 200.207 (Specific conditions);

f. Notices of suspension or termination of awards;

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

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

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

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

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

(2) Appropriations act; and

(3) Any other legislative restrictions on appropriations.

b. Questions pertaining to whether Paperwork Reduction Act (PRA), 44 U.S.C. § 3501, clearance is required for a proposed information collection in connection with a financial assistance program, in addition to FALD review of proposed PRA packages being submitted for OMB clearance;

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

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

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

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

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

h. When there is a need for legal interpretation or other legal advice, and any other issues with potential legal ramifications.

D. Office of Inspector General

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

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

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

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

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

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

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

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

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

E. Finance and Budget Office

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

1. Certify funding availability (this includes assurance that the budgetary line item from which the funds originate is compatible with the financial assistance program under which the funds will be obligated). If funds for a particular award were transferred from another Federal agency, a copy of the interagency agreement reflecting the statutory authority for the transfer of funds to DOC and the transferring agency's statutory authority to provide financial assistance for this purpose must also be included as part of the official award file for the subject action;

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

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

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

5. For updates to the CFDA, bureaus will work closely with their respective budget offices to validate data accuracy and integrity.

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

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

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

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

10. Prepare appropriate billing notice for audit-related and other accounts receivable stemming from financial assistance awards, and promptly notify the Grants Officer and the Program Officer when accounts receivable become delinquent;

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

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

F. Grants Office

The Grants Officer oversees the business management and administrative aspects of grants and cooperative agreements. The Grants Officer or designee will coordinate as appropriate with the Program Officers and other appropriate Departmental offices. Grants Officers shall carry out the responsibilities identified in Paragraphs 1, 2, 3, and 4 of this section without any re-delegation to other parties. The responsibilities outlined in Paragraphs 5 through 27 may be further delegated by the Grants Officer to appropriate members of the Grants Officer's staff. Although these actions may be delegated to appropriate members of the Grants Officer's staff, these duties ultimately remain the responsibilities of the Grants Officer.

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

Grants administration responsibilities are as follows:

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

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

3. Approve final pre-award risk assessment (completed in accordance with 2 CFR § 200.205 (Federal awarding agency review of risk posed by applicants)) and the imposition of specific award conditions (in accordance with 2 CFR § 200.207 (Specific conditions)).

4. Approve, as appropriate, exceptions pursuant to the delegation of authority from the CFO/ASA in accordance with this chapter.

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

6. Maintain the official award files (electronic and/or hard copy).

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

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

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

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

b. Review of any justification for noncompetitive award of discretionary funds and make determination of adequacy of that justification and the basis for the justification;

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

d. If applicable, review of any available Single Audit (*see* Subpart F to 2 CFR Part 200) or other audit report;

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

f. Include DOC ST&Cs in awards, as applicable, as well as any operating unit-specific standard and/or special award conditions required to protect the Federal Government's interest;

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

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

10. Ensure the recipient's compliance with award conditions and recommend appropriate action to the Grants Officer when there is non-compliance.

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

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

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

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

c. Recipients are not maintaining excess cash on hand;

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

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

f. Reports are completed correctly.

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

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

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

16. Manage disposition of real property, personal property or supplies acquired in whole or in part under a financial assistance award by ensuring that the appropriate Property Management Officer is notified of the existence, nature, value, and location of said property under a grant available for disposition, as appropriate.

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

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

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

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

21. Monitor open financial assistance audit recommendations; ensure that open recommendations are properly implemented.

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

a. Proposed *Federal Register* notices, as required, and Notices of Funding Opportunities;

b. Application kits/packages;

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

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

e. Other documents as appropriate.

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

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

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

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

G. Liaison Responsibilities

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

1. Policy Implementation.

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

b. Review relevant draft regulations;

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

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

2. Monitoring.

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

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

3. Liaison and Coordination.

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

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

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

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

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

H. Program Office

The Program Officer, or assigned operating unit component, is responsible for monitoring and oversight of the work being conducted under an award, such as tracking the recipient's progress, comparing the actual accomplishments with the goals and objectives established in the award, and advising the Grants Officer on all programmatic aspects of the awards.

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

The following are programmatic functions to be performed by the Program Office:

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

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

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

4. Prepare *Federal Register* notices, as required, in accordance with Chapter 17 of this Manual, announcing the availability of funds.

5. Prepare FFO announcements for posting in accordance with Chapter 17 of this Manual.

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

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

8. Develop and provide to the Grants Officer written justification for proposed noncompetitive awards of discretionary funds and provide basis for justification, in accordance with the terms on this Manual

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

10. Establish criteria for evaluating project performance. *See* 2 CFR § 200.301 (Performance Measurement).

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

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

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

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

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

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

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

18. Report to the Grants Officer, within 30 days of discovery, concerning potential or existing problems, financial inconsistencies, or situations of noncompliance and provide recommendations for resolution.

19. Monitor the recipient's purchase and use of property acquired under the award or furnished by the Federal Government under the award, and assist the Grants Officer to ensure compliance with the Property Standards of the Uniform Guidance (*see* 2 CFR § 200.310 (Insurance Coverage) through § 200.316 (Property Trust Relationship)), the DOC *Personal Property Management Manual*, the DOC *Real Property Management Manual*, and any other applicable legal requirements.

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

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

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

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

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

[**Note:** A transfer of funds cannot be used to provide Federal assistance unless there is statutory authority allowing the transfer. In addition, both the DOC operating unit and the other agency must possess the requisite grant-making and mission-related authorities to carry out the work under the award. *See also* Chapter 15 of this Manual.]

[**Note**: When DOC provides Federal funds to another Federal agency that is administering a collaborative project with the Department, the agreement governing that transfer of funds must stipulate that DOC funds shall not be used to pay for management fees in excess of costs or profits in a financial assistance award, unless statutorily authorized. *See also* Chapter 9 of this Manual.]

25. Arrange for an independent review to be conducted of institutional grant programs and/or awards in accordance with Chapter 15 of this Manual.

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

I. Property Management Office

1. Ensure uniform implementation of operating unit policies and procedures pertaining to the administration of property purchased under an award by a non-Federal entity or furnished by the Federal Government under an award. This includes communicating to non-Federal entities the property trust relationship that exists when real property, equipment, supplies or intangible property is acquired or improved under an award and the operating unit's requirements regarding the recording of liens or other appropriate notices of record to indicate that real or personal property has been acquired or improved with a Federal award and that use and disposition conditions apply to the property. *See* 2 CFR § 200.316 (Property trust relationship).

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

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

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

5. RELATIONSHIPS WITH OUTSIDE ENTITIES

A. Overview

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

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

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

B. Grants

A grant is the legal instrument reflecting a relationship between DOC and a recipient whenever: (a) the principal purpose of the relationship is to transfer anything of value in order to accomplish a public purpose of support or stimulation authorized by Federal statute, and (b) no substantial involvement is anticipated between DOC and the recipient during the performance of the contemplated activity. The term "grant," as used in this manual, refers to both a grant(s) and cooperative agreement(s), unless specifically stated otherwise. *See* 31 U.S.C. §§ 6304 and 6101(3) and 2 CFR § 200.51 (Grant agreement).

C. Cooperative Agreements

A cooperative agreement is the legal instrument reflecting a relationship between DOC and a recipient whenever: (1) the principal purpose of the relationship is to transfer anything of value to accomplish a public purpose of support or stimulation authorized by Federal statute, and (2) substantial involvement (e.g., collaboration, participation, or intervention by DOC in the management of the project) is anticipated between DOC and the recipient during performance of the contemplated activity. *See* 31 U.S.C. § 6305 and 2 CFR § 200.24 (Cooperative agreement). Cooperative agreements are subject to the same laws; regulations; and OMB, Treasury, and other Federal directives as grants. The following information may be helpful in deciding whether there is substantial involvement in the scope of work of a proposed award.

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

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

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

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

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

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

(4) Notification of changes to key recipient personnel.

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

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

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

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

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

(1) Award follows normal procedures as set forth in 2 CFR Part 200 concerning Federal review of recipient's procurement standards and sole source procurements.

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

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

D. Procurement Contracts

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

E. Other Types of Agreements

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

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

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

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

Activities under the MOU, however, may be carried out through the award of financial assistance when established procedures (including competition) for financial assistance awards are followed.]

[**Note**: When DOC provides Federal funds to another Federal agency that is administering a collaborative project with the Department, the agreement governing that transfer of funds must stipulate that DOC funds shall not be used to pay for management fees in excess of costs or profits in a financial assistance award, unless statutorily authorized. *See also* Chapter 9 of this Manual.]

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

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

6. TYPES OF FINANCIAL ASSISTANCE FUNDS AND AWARDS

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

A. Discretionary Funds

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

1. Competitive Awards. These awards are made after a Federal Funding Opportunity (FFO) has been posted at Grants.gov and DOC has chosen a proposal based on merit review, including the application of established evaluation and selection criteria. The DOC may also treat as competitive an award that was solicited and reviewed through another federal agency’s competitive process or through a competitive solicitation process developed by several federal agencies acting in partnership. *See* Chapter 17 of this Manual for instructions in preparing *Federal Register* notices, as required, and FFOs announcing the availability of financial assistance funds. Program officials are encouraged to further publicize notices through Internet announcements, mailing lists, presentations at conferences, professional journals, trade association newsletters, and other media that are available and accessible to potential applicants.

2. Institutional Awards.

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

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

(2) The initial request for applications shall be the same as that for competitive awards and should mention the intent to establish institutional award status.

(3) If a recipient of an institutional award is not complying with the terms and conditions of the award, that recipient should generally be replaced by an applicant that is selected through full and open competition.

(4) Programs that make institutional awards must conduct periodic reviews in accordance with the provisions of Chapter 15 of this Manual.

b. The Grants Officer is responsible for determining whether a program is designated as an institutional award program and may determine that only one or more awards under a program are institutional awards. Institutional awards should only be established between an operating unit and a recipient for long-term projects that are common to the programmatic goals and objectives of DOC and the recipient.

c. Institutional awards are not the same as multiyear awards, although they may be incrementally funded within an award period. Other projects of long-term duration may be funded using DOC Multi-Year Funding procedures prescribed in Chapter 18 of this Manual.

3. Noncompetitive Awards.

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

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

(2) In instances where the application does not fall within the scope of a published competitive notice and the agency determines in accordance with Chapter 8 of this Manual, that the application has merit and falls within one of the five listed categories.

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

B. Nondiscretionary Funds

Nondiscretionary funds are those funds for which DOC cannot exercise judgment in selecting an award recipient. The two types of awards made with nondiscretionary funds are:

1. Awards Mandated by Statute. These mandatory awards are made to organizations that are specifically named (not just generally described as to type of organization) in a statute and for which funds may be set aside in an appropriations act. The recipient is entitled to the award and has an enforceable right to receive financial assistance.

2. Awards Limited by Statute. These awards are made to organizations for which eligibility has been limited by law to a particular class of applicants, every one of which has been notified of the availability of funding, and every applicant that applies and that meets statutory requirements is assured an award (e.g., there may be special language in an appropriations act directing an agency to make awards to every state that applies for funding and meets certain criteria). Depending upon the program and its legislation, there may be competition among the eligible applicants for additional funding as an incentive for receiving proposals for innovative or pilot/demonstration projects.

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

7. TYPES OF APPLICATIONS

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

A. Pre-applications

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

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

2. Pre-application Competition. A second type of pre-application process is one in which reviewed projects are eliminated from further consideration, based upon explicit criteria expressly set forth in the FFO.

B. Competitive Applications

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

1. New Competitive Awards.

   a. Competitive applications are submitted pursuant to a competitive FFO announcement published by a DOC operating unit at Grants.gov, as required in section A of Chapter 17 of this Manual. Widespread publicizing is strongly encouraged and is recommended (e.g., Internet, mailing lists, conferences, professional journals, and trade association newsletters).

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

2. Competitive Renewal. Competitive renewals are treated the same as a new competitive award. This type of application may be accepted unless prohibited by the program’s legislation, regulations, or other published policy. Applications for competitive renewal funding must compete for funding with

applications submitted by other eligible applicants and must be submitted in accordance with any established deadline dates and will be subjected to the applicable review requirements for competitive awards. If the application is approved for funding, the Grants Officer shall fund the extended period of support as a new funding period and an extension of the original period of performance. Competitive renewals are only appropriate in cases where the program's priorities do not vary from year to year, thus allowing a recipient to perform the identical work (for which it was funded in prior years) in the current competitive funding year.

C. Noncompetitive Applications

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

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

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

3. Renewal Amendments. A renewal amendment extends the project and funding periods of an award, while adding funds. Appropriate uses of this type of amendment include renewals of nondiscretionary awards and renewals of awards that are funded annually based on an FFO posted at Grants.gov, which expressly indicates that awards would be selected for a period of more than one year but funded and extended annually, contingent upon the availability of funds, satisfactory performance, and at the discretion of DOC. (Program priorities do not change from year to year.) Noncompetitive awards of discretionary funds should not normally be given a renewal without competition. If an application to renew an existing award is approved for funding, the Grants Officer shall fund the extended period of support as a new funding period and an extension of the original period of performance. Note that "renewal" and "continuation" are not Federal-wide terms and other Federal agencies may use contrasting definitions.

4. Amendments for Continuations (Multi-year Awards). A continuation amendment is made without competition and provides continued funding within an approved period of performance, such as when multi-year funding was approved at the time of award approval. Chapter 18 of this Manual provides procedures for funding multi-year awards when full funding of the period performance is not available at the time of initial award. Note that "renewal" and "continuation" are not Federal-wide terms and other Federal agencies may use contrasting definitions.

5. Extension Amendments at No Additional Cost to the Government (No-cost Extensions). Unless restricted by statute, regulations, or the terms and conditions of an award, a recipient may notify the

Grants Officer of its decision to use a one-time noncompetitive extension of the final funding period for up to 12 months beyond the ending date of the funding period as shown on the Financial Assistance Award notice. This one-time extension may not be exercised merely for the purpose of using unobligated balances. Such extension is made without additional funding. In certain circumstances, prior Federal approval is required. *See* 2 CFR § 200.308 (Revision of budget and program plans). Any further no-cost extension requires Grants Officer approval.

D. Supplemental Applications

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

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

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

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

A. Overview

It is the policy of DOC to seek full and open competition for award of discretionary funds. Operating units must conduct application reviews in accordance with the requirements stipulated in 2 CFR Part 200. Moreover, DOC financial assistance must be awarded through a merit-based review and selection process whenever possible. This Chapter prescribes the standards and procedures for reviewing, selecting, approving, and notifying applicants of funding decisions.

B. Review Standards

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

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

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

(2) Funding availability;

(3) Complete application package; and

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

b. Applications should undergo an initial screening for conformance with the minimum general requirements and any mandatory technical and administrative requirements stated in the program's regulations and FFO. The Program Office must document and maintain a record of reason(s) if any application is determined to be incomplete. The agency, in its sole discretion, may continue the review process for applications with non-substantive issues that may be easily rectified or cured.

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

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

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

4. Merit Reviews of Competitive and Noncompetitive Awards.

a. Merit Review of Competitive Awards:

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

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

b. Merit Review for Noncompetitive Awards:

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

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

5. Reviewers of Applications.

a. The DOC program office shall select reviewers on the basis of their professional qualifications and expertise. Reviewers of any particular application may be any mixture of Federal or non-Federal experts, sometimes including individuals from within the cognizant program office.

b. The Selecting Official should not be involved in the review of applications for the purpose of determining whether to recommend the application for approval. If it becomes necessary for a Selecting Official to review applications for this purpose, the program office must obtain a conflict-of-interest review by FALD and the official grant file must contain documentation demonstrating that there is no conflict of interest or that any conflict is resolved. In addition, a review panel should have at least one member who is outside the chain of command of the Selecting Official whenever possible.

c. Reviewers must evaluate and, in some cases, score the technical merits of applications and accompanying proposals.

d. Reviewers must comply with the requirements for the avoidance of conflict of interest discussed at Chapter 15, Section C., of this Manual. In addition, each reviewer must use the

application information only for review and to treat it in confidence except to the extent that the information is available to the general public from any source without restriction as to its use. Further, each reviewer must agree to comply with any notice or restriction placed on the application. Upon completion of the review, the reviewer shall return to DOC or destroy all copies of the application and accompanying proposals (or abstracts, if any). Unless authorized by DOC, the reviewer shall not contact the applicant concerning any aspect of the application. Non-Federal reviewers must fill out the Form CD-571 (Reviewer Conflict of Interest and Confidentiality Certification for Non-Governmental Peer Reviewers) or an equivalent certification. If equivalent certifications are used, FALD should review them for completeness before they are used.

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

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

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

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

c. Federal Advisory Committees. Any advisory group, with limited exceptions, that is established or used by a Federal agency and that has at least one member who is not a Federal employee, may implicate the Federal Advisory Committee Act. A program office should consult OGC if it contemplates using a group that includes any non-Federal individuals, to review financial assistance applications.

C. Evaluation and Selection Requirements for Competition

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

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

1. Group Competition. The Program Office must prepare a rank ordering of the applications based solely on independent reviewers' evaluation and scoring of each complete application that meets the notice requirements. The Selecting Official must use the reviewer evaluation and any other selection criteria published in the solicitation as the standard for making recommendations to determine successful applicants. *See also* 2 CFR § 200.306 (Cost sharing or matching). The Selecting Official must prepare a package: (1) demonstrating that the selection process is in compliance with the procedures published in the FFO or in the program regulations, and (2) summarizing the results of the competitive review, consisting of the following documentation:

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

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

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

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

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

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

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

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

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

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

k. Identification of the Selecting Official.

2. Individual Qualification. The Program Office must adequately document the selection process based on the reviewer evaluations of each complete application that meets the notice requirements.

The selecting official will use the reviewer/panel evaluations and other selection criteria published in the solicitation in making recommendations to determine the successful applicants. The Selecting Official must prepare a package: (1) demonstrating that the selection process is in compliance with the procedures published in the FFO, the *Federal Register* notice, as applicable, or in the program regulations, and (2) summarizing the results of the review consisting of the following documentation:

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

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

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

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

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

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

g. Identification of the Selecting Official.

D. Review Process for Applications for Competitive Awards

1. Posting an FFO on the OMB-designated governmentwide Web site or Publishing a *Federal Register* Notice, as applicable. Applications must be solicited via an FFO posted on the OMB-designated governmentwide Web site, currently Grants.gov or via a *Federal Register* Notice, in accordance with Chapter 17of this Manual.

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

3. Grants Office Review. The Grants Office will conduct a final review of all applications recommended for funding by the Selecting Official. The Grants Officer is the DOC official who makes the final decision for the Government on whether to fund an application. The Grants Officer's final decision must be consistent with published policies.

4. OGC Review. The OGC will review grant applications and supporting documents for proposed awards where Federal funding exceeds $150,000 (unless a waiver has been granted under the provisions of Chapter 4.C.3). The OGC will advise the Grants Officer on all matters related to law and the legal form and effect of these proposed award actions. The OGC will be available to assist and respond to questions about any individual financial assistance action.

E. Review Process for Applications for Institutional Awards

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

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

3. Periodic Reviews. Reviews of programs that make institutional awards must be conducted at least once every five years to evaluate the effectiveness and continued desirability of the use of institutional awards in accordance with Chapter 15 of this Manual. The results of these reviews must be a consideration by both the Program Officer and the Grants Officer in making a determination to continue providing funding without competition to each recipient of an institutional award.

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

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

1. Program Office Review.

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

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

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

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

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

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

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

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

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

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

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

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

2. Grants Office Review. The Grants Office will conduct a final review of all proposed noncompetitive applications recommended for funding by the selecting official. The Grants Officer is

the DOC official who makes the final decision for the government on the acceptability of the justification for award without competition and whether to fund noncompetitive applications.

3. OGC Review. The OGC reviews all noncompetitive applications and supporting documentation proposed for award to advise the Grants Officer as to legal form and effect, unless review has been waived by the FALD Chief.

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

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

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

3. Grants Office Review. In coordination with the Program Office, OGC, and other offices as appropriate, the Grants Office will conduct a final review of all applications for nondiscretionary funds that are recommended for funding by the appropriate program official. The Grants Officer is the DOC official who approves the application for funding. The Grants Officer's final decision must be consistent with published policies.

4. OGC Review. The OGC will review all nondiscretionary applications and supporting documents for proposed awards to advise the Grants Officer on all matters related to law and the legal form and effect of the proposed award actions, unless review has been waived by the FALD Chief.

H. Congressional Notification

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

2. Once an award with Federal funding is ready to be approved, the Grants Office shall update both OLIA's grants notification system so that Congressional notification may be conducted, as well as USA Spending.gov. For multi-year awards, the amount to be announced is the initial amount to be obligated, not the total amount of the award; subsequent funding is reported when the additional funding is added to the award. OLIA should notify Congress or other appropriate officials within two

workdays that the proposed awards are pending and will be made shortly. OLIA may, at its discretion, authorize a different procedure for notifying Congress of pending awards. Three workdays after submission of the electronic information, the Grants Officer may approve the award, unless OLIA has placed a "hold" on the award in the database. For example, an award not being "held" by OLIA could be approved by the Grants Officer on Friday if information was electronically provided to the database on Tuesday.

I. Obligation of Funds

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

J. Notice to Applicants

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

2. Unsuccessful Applicants.

a. The Program Officer shall determine the best method for notifying unsuccessful applicants. These notifications must be in writing and can take place in either of the following ways:

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

(2) The Program Office may notify applicants whose applications will not receive merit review at the time of this decision. The Program Office may notify all unsuccessful applicants that their applications are not being recommended for funding when the Selecting Official has decided which applications to recommend to the Grants Officer for further action.

b. Applications, correspondence, and other records relating to unsuccessful (rejected, withdrawn, or unfunded) applications may be destroyed three years after rejection or withdrawal. Applications not meeting application deadlines or minimum review requirements may be returned to the applicant. The policy concerning disposition of unsuccessful applications should be included in the Federal Funding Opportunity announcement.

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

9. PRE-AWARD ADMINISTRATIVE REQUIREMENTS

A. Application Package

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

1. Copy of the applicable FFO prepared in accordance with Chapter 17 of this Manual.

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

   a. Standard Form 424 - Application for Federal Assistance

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

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

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

   e. Standard Form 424D - Assurances - Construction Programs

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

   g. Standard Form 424 - Short Organizational Family

   h. Standard Form 424 - Individual Form Family

   i. Standard Form 424 - Mandatory Family

   j. Standard Form LLL - Disclosure of Lobbying Activities

   k. Form CD-511 - Certification Regarding Lobbying

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

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

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

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

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

B. Recommendation for Funding

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

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

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

3. Copy of the applicable FFO or the justification for noncompetitive award as provided in Chapter 8 of this Manual; the original documentation of the review panel's evaluations; and the Selecting Official's basis for determination to recommend for funding based on program priorities if not already provided in a summarized package in accordance with Chapter 8 of this Manual. When institutional awards are providing additional funding without competition through either a new award or an amendment, a summary including the date of the most recent report and brief description of the results of the last program review conducted in accordance with provisions of Chapter 15 of this Manual must be included.

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

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

C. Budget Analysis

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

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

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

   a. The allowability and necessity for individual cost categories;

   b. The reasonableness of amounts estimated for necessary costs;

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

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

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

D. Costs

Eligible costs under a DOC financial assistance award must be in accordance with the applicable cost principles (2 CFR Part 200, Subpart E).

[**Note**: If the Grants Officer applies 48 CFR Part 31 to an award to a for-profit entity, then 2 CFR Part 200 Subpart E would not apply.]

1. Cost Sharing or Matching Funds. Cash and in-kind contributions that are included in the budget of the award must be valued in accordance with 2 CFR Part 200.

   a. All awards that include Federal and non-Federal sharing incorporate a budget (using SF 424a or SF 424c) consisting of shared allowable costs. If actual allowable costs are less than the total approved budget, the Federal and non-Federal cost shares shall be calculated by applying the approved Federal and non-Federal cost share ratios to actual allowable costs. If actual allowable costs are greater than the total approved budget, the Federal share shall not exceed the total Federal dollar amount authorized by the award.

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

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

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

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

4. Indirect Cost Rates. At 2 CFR 200.414(c), the Uniform Guidance requires Federal agencies to accept federally negotiated indirect cost rates unless certain exceptions apply. *See* Financial Assistance Memorandum 2015-02 (The Department of Commerce's Policies, Procedures, and General Decision-Making Criteria for Deviations from Negotiated Indirect Cost Rates under Federal Financial Assistance Programs and Awards, July 20, 2015) for direction.

5. Pre-Award Costs. Eligible pre-award costs under a DOC financial assistance award must be in accordance with 2 CFR §§ 200.458 (Pre-award costs) and 200.308 (Revision of budget and program plans). It is DOC's policy to waive the prior approval requirement for pre-award costs (up to 90 days) for research awards. However, such costs incurred remain at the applicant's risk. The Grants Officer should approve in writing any pre-award costs of more than 90 days and should consult FALD if questions arise about the availability of authority.

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

considered program income and not fees. Program income is allowable. Recipients should refer to the guidance for program income in item 7 below.

7. Program Income.

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

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

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

d. The disposition of program income shall be in accordance with the applicable Federal administrative requirements and will be specified in the terms and conditions of each award. *See* 2 CFR § 200.307 (Program income).

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

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

F. Applicant's Management and Financial Capabilities

DOC policy is to make awards to applicants and recipients who are competently managed, responsible, capable, and committed to achieving the objectives of the awards they receive. It is essential, therefore, that precautions be taken to award grants only to reliable and capable applicants who can reasonably be expected to comply with award requirements. Therefore, operating units will conduct a review of risk posed by applicants in accordance with 2 CFR § 200.205 (Federal awarding agency review of risk posed by applicants).

G. Review of Recipient's Risk

1. The Grants Officer is charged with determining whether an applicant is sufficiently responsible to receive Federal financial assistance in accordance with the requirements established in 2 CFR §§ 200.205 (Federal awarding agency review of risk posed by applicants) and 200.207 (Specific conditions), as applicable.

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

   a. Not make the award;

   b. Delay the award until conditions are corrected; or

   c. Impose additional specific award conditions as needed, in accordance with 2 CFR § 200.207 (Specific conditions).

3. In any instance where a Grants Officer intends to deny, or a program office fails to recommend, a grant or cooperative agreement to an applicant on the basis of pre-award concerns relating to the applicant's present responsibility, the applicant must be given notice of the Department's determination. In addition, per 2 CFR § 200.212 (Reporting a determination that a non-Federal entity is not qualified for a Federal award), the Grants Officer must determine if a report must also be made to the designated integrity and performance system accessible through SAM, currently the Federal Awardee Performance and Integrity Information System, (FAPIIS). Such a determination relates solely to the applicant's present responsibility and the particular award for which the determination is being made, and does not affect the applicant's eligibility for future awards. The notice to the applicant must provide the applicant an opportunity to submit information showing that the Department's determination is in error or otherwise warrants reconsideration. Once an adverse determination has been made, an award may be made to the next appropriate applicant. Whenever a determination is made which will deny an award based on responsibility concerns, and the denial is part of a long-term plan to disqualify the applicant, DOC's formal debarment and suspension regulations (2 CFR Part 1326) must be followed. These regulations provide procedures for excluding organizations from participating in Federal procurement and nonprocurement activities on a government-wide basis. Failure to provide the appropriate procedures may expose DOC to a valid claim of de facto debarment based on an argument by the applicant that it has been denied due process of law. As a practical matter, government-wide debarment and suspension under 2 CFR Part 1326 is used only in the most serious cases, such as indictment for and/or conviction of criminal offenses.

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

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

   b. Impose additional specific award conditions as needed, in accordance with 2 CFR § 200.207 (Specific conditions); or

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

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

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

H. Awards to Insular Areas

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

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

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

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

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

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

I. Preparation of Financial Assistance Award

1. Uniform Administrative Requirements, Cost Principles, and Audit Requirements (Uniform Guidance). The Uniform Guidance, which is codified at 2 CFR Part 200, applies to most DOC awards, regardless of the type of recipient. The Uniform Guidance consolidates and supersedes the administrative requirements and cost principles that had formerly been codified at 15 CFR Parts 14 and 24 (applicable to institutions of higher education, hospitals, other non-profit, and commercial organizations and state and local governments, respectively) and 2 CFR Parts 220, 225, and 230, applicable to educational institutions; state, local, and Indian Tribal governments; and non-profit organizations.

In accordance with 2 CFR 200.101(c), the operating unit may apply Subparts A through E of 2 CFR Part 200 to for-profit entities.

a. 48 CFR Part 31 (Contracts with Commercial Organizations) applies to for-profit organizations and individuals.

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

[**Note**: If the Grants Officer applies 48 CFR Part 31 to an award to a for-profit entity, then 2 CFR Part 200 Subpart E would not apply.]

2. Award Document. The Form CD-450 (Financial Assistance Award) or Form CD-451 (Amendment to Financial Assistance Award) shall be used as the award documents for all grants or cooperative agreements funded by DOC and must comply with 2 CFR § 200.210 (Information contained in a Federal award). In addition to the information required for a Federal award, the following must be included.

a. Period of Performance.

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

(2) In order to avoid delays that could possibly jeopardize the success of a project or possibly result in the recipient putting itself at risk by incurring costs without having a properly executed award document, applications should be requested and processed in a timely manner.

(3) Procedures for funding proposals that include a project description and budget incorporating more than one year of activity when only a portion of the entire amount of Federal funding is available are found in Chapter 18 of this Manual.

b. Budget. A budget must be included in every award. It shall be used as the established standard for financial monitoring purposes. Changes made to the budget once the award is issued must be made in accordance with the DOC Standard Terms and Conditions, applicable regulations, and OMB Circulars. Each budget contains a detailed listing of categories of costs which are allowable under the award. Only those categories of costs which have funding included in the approved budget are considered allowable costs under a grant or cooperative agreement. The recipient cannot add a new budget category to an approved budget without prior written approval from the Grants Officer.

c. Special Award Conditions. In addition to the laws, regulations, 2 CFR Part 200, DOC Standard Terms and Conditions, and Program-Specific Terms and Conditions controlling the administration of a grant, special award conditions may also be imposed when justified by circumstances. Special award conditions imposed after the award has been made must be agreed to by both the recipient and the Federal Government unless Federal law or regulation provides the Federal Government with the right to impose specific award conditions under the grant in accordance with 2 CFR §§ 200.205 (Federal awarding agency review of risk posed by applicants) and 200.207 (Specific conditions). Department-wide or program specific special award conditions should be used, as applicable, in all DOC grants and cooperative agreements. Other special award conditions may include the following:

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

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

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

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

(2) In the event the evaluation of risk of the recipient warrants specific award conditions, the Grants Officer will comply with 2 CFR §§ 200.205 (Federal awarding agency review of risk posed by applicants) and 200.207 (Specific conditions), as applicable.

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

d. Standard Terms and Conditions.

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

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

10. POST AWARD ADMINISTRATION REQUIREMENTS

A. Official Award File

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

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

2. The original applicant proposal, budget, budget justification, and any amendments to these documents. In addition, the Federal Funding Opportunity announcement as it appeared on grants.gov.

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

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

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

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

   b. Applicants shall comply with all requirements stipulated in 2 CFR § 200.205 (Federal awarding agency review of risk posed by applicants) related to the review of applicant risk requirements;

   c. Verification that a completed Form CD-511 (Certification Regarding Lobbying) is complete;

d. The appropriate funding instrument was used in a particular transaction, i.e., grant, cooperative agreement, or contract, in accordance with 2 CFR § 200.201 (Use of grant agreements (including fixed amount awards), cooperative agreements, and contracts);

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

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

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

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

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

a. The specific section of 2 CFR Part 200 (*see* 2 CFR § 200.102 (Exceptions)) for which a less restrictive requirement is imposed or for which a case-by-case exception is made;

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

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

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

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

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

13. Site visit reports, as applicable.

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

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

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

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

[**Note**: When DOC provides Federal funds to another Federal agency that is administering a collaborative project with the Department, the agreement governing that transfer of funds must stipulate that DOC funds shall not be used to pay for management fees in excess of costs or profits in a financial assistance award, unless statutorily authorized. *See also* Chapter 9 of this Manual.]

B. USASpending.gov

1. The Federal Funding Accountability and Transparency Act, as amended (*See* 31 U.S.C. § 6101 note) (FFATA) requires information on Federal awards (Federal financial assistance and obligations) be made available to the public via a single, searchable Web site. This information is available at USASpending.gov. Recipients and identified subrecipients must include the following required data elements in their application:

a. The name of the entity receiving the award;

b. The amount of the award;

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

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

e. Unique identifier of entity.

2. Reporting Subawards and Executive Compensation. Prime grant recipients awarded a new Federal grant greater than or equal to $25,000 on or after October 1, 2010 are subject to FFATA subaward reporting requirements as outlined in 2 CFR part 170. The prime recipient is required to file a FFATA subaward report by the end of the month following the month in which the prime recipient awards any sub-grant greater than or equal to $25,000. *See* 31 U.S.C. 6101 note. The DOC incorporates the award term required by Appendix A of 2 CFR part 170 into all financial assistance awards.

C. Costs under DOC Awards

The Uniform Guidance supersedes cost principles set out in OMB Circulars and codified at 2 CFR Parts 220, 225, and 230, but does not supersede the Contract Cost Principles, which generally apply to for-profit entities. At 2 CFR § 200.101(c), the Uniform Guidance provides that agencies may, but are not required to, apply Subparts A through E of 2 CFR Part 200, which include the cost principles at Subpart E, to for-profit entities. Therefore, the Grants Officer in consultation with the Program Office may elect to

apply the cost principles under the Uniform Guidance (*see* Subpart E to 2 CFR Part 200) or the Contract Cost Principles when making an award to a for-profit entity.

[**Note**: If the Grants Officer applies 48 CFR Part 31 to an award to a for-profit entity, then 2 CFR Part 200 Subpart E would not apply.]

D. Amendments

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

- Change in scope or objective;
- Revisions requiring additional funds;
- Budget revisions when the cumulative transfers among direct cost categories exceed 10% of the total Federal and non-Federal funds authorized by the Grants Officer and the Federal share is greater than the Simplified Acquisition Threshold (currently $150,000);
- Inclusion of costs requiring prior approval, as specified by the Cost Principles at 2 CFR Part 200 Subpart E; and
- Under non-construction projects: contracting for, sub-granting, or otherwise obtaining the services of a third-party to perform activities central to the purpose of the award.

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

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

E. Project Monitoring

The purpose of project monitoring is to ensure that recipients fulfill the terms and conditions of their awards. Project monitoring shall be the joint responsibility of the Grants Officer, Program Officer, award recipient, and/or their designees. Monitoring may include performing site visits, preparing written and/or oral reports, holding meetings, or any other form of communication deemed appropriate by the Grants Officer for keeping apprised of project progress. *See* 2 CFR § 200.328 (Monitoring and reporting program performance). Grants Officers and Program Officers may request audit assistance from the OIG in fulfilling their monitoring responsibilities. Allegations of fraud, waste, and abuse may also be referred to the OIG or made anonymously through the OIG Hotline at 1-800-424-5197.

F. Recipient Responsibilities

Recipients of DOC financial assistance awards are responsible for achieving the scope of work and other activities delineated in the proposal as incorporated into their awards and any DOC-approved amendments thereto. Recipients are also responsible for ensuring that they comply with all of the terms and conditions of their awards and with the provisions made as part of the award including, but

not limited to, exercising appropriate financial management, accounting, and control over award funds and other assets; and reporting to the Grants Officer and Program Officer as required under the terms and conditions of their award.

Award recipients that issue subawards, i.e., entities that function in whole or in part as pass-through entities, are subject to the requirements of 2 CFR § 200.311 (Real property). These requirements place specific obligations on pass-through entities that are similar to the requirements placed on Federal agencies for administering financial assistance awards.

11. ENFORCEMENT

A. Overview

The Grants Officer, in consultation with the Program Office, is authorized to take appropriate actions if recipients fail to meet their obligations under awards. Proposed suspensions and terminations must be reviewed by FALD prior to execution. Every grant and cooperative agreement contains a provision for suspension and/or termination of the award for deficient project performance, poor financial management, non-payment of accounts receivable, and/or other non-compliance or deficiency problems. Suspension or termination of an individual award is not an action covered by the provisions of 2 CFR Part 1326 and Part 180 (Nonprocurement Debarment and Suspension).

B. Enforcement

Enforcement actions may include, but are not limited to, discussions of corrective actions needed, written notice delineating needed actions; pre-enforcement warnings; imposition of risk-based specific award conditions; suspension of the award, suspension of payment, or both; termination of the award; or debarment and suspension of the recipient pursuant to 2 CFR Part 1326 and Part 180. *See* 2 CFR § 200.338 (Remedies for noncompliance) and 2 CFR § 200.341 (Opportunities to object, hearings and appeals).

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

2. Risk-based Specific Award Conditions. If a recipient materially fails to comply with the terms and conditions of an award, the Grants Officer may impose specific award conditions pursuant to 2 CFR § 200.207 (Specific conditions). Such specific conditions may include placing the recipient on reimbursement only, or other requirements unique to the circumstances at hand. The recipient must be notified in writing of the specific award conditions and informed of corrective actions necessary to remove the restrictions in accordance with 2 CFR § 200.207(b).

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

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

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

5. Termination Noncompliance with Award Terms (frequently referred to as termination for cause). The Grants Officer may terminate any DOC award for material noncompliance, which includes, but is not limited to, violation of the terms and conditions of the award; failure to perform award activities in a satisfactory manner; improper management or use of award funds; or fraud, waste, abuse, mismanagement, or criminal activity. All termination for material noncompliance actions must be documented in the official award file in writing. The recipient must be notified of the termination action in writing using the same minimum requirements listed under a suspension in Paragraph 4., above, if a suspension that notified the recipient of potential termination for noncompliance did not precede the termination action. *See* 2 CFR §§ 200.338 and 200.339(a)(1).

6. Termination for Cause. "Termination for cause" as articulated at 2 CFR § 200.339(a)(2) is a new concept in Uniform Guidance issued in 2014, distinguishable from traditional authorized grant terminations for noncompliance, by mutual agreement, or by the recipient, as described in 2 CFR 200.339(a). In accordance with guidance provided by OMB, an agency's authority to terminate for cause is relatively circumscribed. OMB explains as follows in the preamble to the Uniform Guidance:

> Commenters suggested that language should be added to allow for Federal agency termination for cause, because situations often arise beyond the Federal agency's or non-

Federal entity's control which may require awards to be terminated. This language would prove useful in situations like those encountered during implementation of the Recovery Act or Sequestration, where congressional mandates encouraged expedited performance, or changes to appropriated amounts require modifications to programs. *See* 78 Fed. Reg. 78589, 78599 (Dec. 26, 2013).

Based on this guidance, a Federal awarding agency should only terminate for cause when required by a circumstance beyond the agency's control, such as a Congressional mandate. Absent such a circumstance, an agency may not withdraw previously obligated funds. Proposed terminations for cause under 2 CFR § 200.339(a)(2) must be reviewed by FALD.

7. Reporting of Termination Actions. When a Federal awarding agency terminates a Federal award prior to the end of the period of performance due to the non-Federal entity's material failure to comply with the Federal award terms and conditions, the Grants Officer must report the termination to the OMB-designated integrity and performance system, currently the Federal Awardee Performance and Integrity Information System, (FAPIIS). *See* 2 CFR § 200.339 (Termination), and 2 CFR § 200.340 (Notification of termination requirement). The non-Federal entity shall be informed of the FAPIIS reporting and their right to comment on the information reported.

C. Concurrent Actions

Occasionally, when considering an administrative enforcement action, the Grants Officer may discover or be aware that other actions are concurrently ongoing or are about to be initiated against a recipient and/or its officers or employees. Such other actions may include OIG audits and/or investigations, and criminal or civil investigations/prosecutions by the Department of Justice. In such instances, it is important to coordinate, to the extent possible, any proposed administrative enforcement action with the authorities pursuing the other actions, in order to avoid any adverse impact on those other actions. Accordingly, when the Grants Officer is proposing enforcement action requiring FALD review and an opportunity to comment (suspensions and terminations), or requiring FALD clearance (proposed debarments and suspensions under 2 CFR Part 1326 and Part 180), FALD must be informed about the other actions, so that it can assist, if necessary, in the proper coordination with the other authorities. In addition, FALD must be informed of any other actions when the Grants Officer requests FALD's review of lesser administrative enforcement actions or of non-enforcement termination (that is, by mutual agreement or by the Recipient).

1. Termination by Mutual Agreement or by the Recipient. In financial assistance, the Federal Government may not terminate an award unilaterally for the convenience of the government. However, per 2 CFR § 200.339(a)(3) and (a)(4), an award may be terminated under the following conditions:

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

(b) By the recipient upon sending to the Grants Officer written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the Grants Officer determines in the case of partial termination that

the reduced or modified portion of the grant will not accomplish the purposes for which the grant was made, it may terminate the grant in its entirety.

All termination actions must be documented in the official award file in writing. *See* 2 CFR § 200.339 (Termination).

2. Debarment and Suspension of a Recipient. Debarment and suspension of a recipient are actions taken pursuant to 2 CFR Part 1326 and Part 180, which implements EO's 12549 and 12689. The actions are intended to debar or suspend a recipient organization from participating in any Federal program, government-wide. Debarment and suspension are imposed, not as punishments, but to protect the interests of the government. The integrity or present responsibility of an applicant or recipient is at issue in a debarment or suspension, and such action is imposed only in egregious circumstances; e.g., when a recipient or applicant has been indicted and/or convicted of a criminal offense. All of the regulatory requirements of 2 CFR Part 1326 and Part 180 must be met before a recipient organization can be debarred or suspended from participation in Federal programs. This action must be distinguished from suspension of an individual award by a Grants Officer as discussed above. The FALD shall review all proposed debarments and suspensions under 2 CFR Part 1326 and Part 180.

12. AWARD CLOSE-OUT

Proper award close-out is required for all DOC financial assistance awards. An award expires at midnight local time for the recipient on the date which is listed on the last approved amendment (Form CD-451) as the "Extend Period of Performance To" date or on the original Financial Assistance Award document (Form CD-450) as the "Period of Performance." General procedures for award close-out are contained in 2 CFR §§ 200.343 (Closeout) and 200.344 (Post-closeout adjustments and continuing responsibilities).

A. Responsibilities

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

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

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

4. The Grants Officer should complete all closeout actions no later than one year after receipt and acceptance of all required final reports.

B. Unobligated Funds

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

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

C. Deobligation of Funds

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

D. Retention of Records

1. General procedures for record retention are contained in 2 CFR § 200.333 (Retention requirements for records).

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

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

b. Provide appropriate assurances of government access thereto.

E. Unilateral Termination and/or Administrative Closeout

1. The Grants Officer will effectuate the unilateral termination and/or administrative closeout of:

a. expired and unexpired awards pending closeout where the recipient is no longer in existence; and

b. expired awards pending closeout where the recipient is in existence, but is unresponsive to bureau notifications and attempts to contact.

2. The unilateral termination and/or administrative closeout procedure does not apply to unexpired awards where the recipient is in existence, but is materially non-compliant with the terms and conditions of the award. In such cases, the Grants Officer should take appropriate enforcement action under the award in accordance with 2 CFR § 200.343 (Closeout), the terms and conditions of the award, Chapter 11 of this Manual, and bureau policy. Once an active award is terminated, such an award may become subject to this procedure.

3. The unilateral termination and/or administrative closeout procedure also does not apply to recipients that are a party to an active bankruptcy case which, in accordance with Chapter 4 of this Manual should be coordinated with the OGC General Litigation Division with such coordination generally through the OGC Federal Assistance Law Division (FALD). The OGC General Litigation Division (through FALD) should also be consulted where a recipient is dissolved or reorganized upon an order of the U.S. Bankruptcy Court.

4. All operating units are required to satisfy all of the conditions listed below, as well as resident operating unit policy, and to document the official award file to adequately capture the operating unit's due diligence efforts in determining that a recipient is no longer in existence and that the award should be unilaterally terminated and/or unilaterally closed out by the Grants Officer. Operating units shall:

a. Use all existing contact information (to include electronic mail and telephone numbers) to contact the recipient organization.

b. Send a letter to the recipient by certified mail, return receipt requested, following the general template provided in the Sample Business Official's Notice to Submit Documentation (Appendix A of this chapter) to the recipient's most recent address as reflected in the official award file. At the Grants Officer's discretion and as part of the operating unit's due diligence process, duplicate letters may also be sent to other addresses listed for the recipient. The certified letter may be modified from the template to incorporate any necessary operating unit specific requirements or policies, provided such requirements are consistent with this Manual.

c. Conduct a search of SAM to determine if the recipient has an active Central Contractor Registry as well as Do-Not-Pay and FAPIIS to determine if there is adverse information concerning the recipient.

d. Conduct an electronic search of the Secretary of State website for the State in which the recipient is incorporated to determine if the recipient organization remains in existence and is an organization in good standing relative to State organizational filings and other State requirements.

e. Thoroughly document all efforts to contact the recipient. The Missing Data Report and Due Diligence Checklist (Appendix B of this chapter) may be used as a general template for the report or an appropriate operating unit specific form may be substituted. This report should be completed by the assigned Grants Specialist or Team Lead and reviewed by the Grants Officer or other appropriate official. The Grants Officer will sign the report once he/she is satisfied that the proper due diligence was conducted and that the recipient is no longer in existence.

In accordance with Chapter 4 of this Manual, FALD review of actions pursuant to this closeout procedure is not required, but may be requested by the Grants Officer where there are specific questions or concerns relative to a recipient's organizational status or relative to the adequacy of the operating unit's due diligence efforts.

f. Upon a determination by the Grants Officer that the recipient is no longer in existence, the Grants Officer, using the Sample Unilateral Termination and/or Unilateral Closeout Memorandum (Appendix C of this chapter), or an appropriate operating unit specific memorandum, will document the official award file relative to the unilateral termination and/or administrative closeout of the award, and will further notify the operating unit’s Finance/Accounting Officer to deobligate any undisbursed Federal funds relative to the subject financial assistance award. Unexpired awards where the recipient is no longer in existence must be unilaterally terminated by the Grants Officer in a separate action or as part of the action providing for the administrative closeout of the award. Award termination actions must be carried out by the Grants Officer in accordance with 2 CFR § 200.343 (Closeout), Chapter 11 of this Manual (Enforcement), and resident operating unit policy.

g. In accordance with Chapter 14 of this Manual, the operating unit, in consultation with operating unit’s Finance/Accounting Officer and FALD, should investigate the appropriateness of establishing an accounts receivable against the recipient for some or all of the Federal award funds that are not properly accounted for or expended by the recipient (e.g., a recipient’s failure to file SF-425s or to submit A-133 or project-specific audits, as required under the terms and conditions of the subject award).

h. The unilateral termination and/or administrative closeout of a financial assistance award generally does not affect any later disallowance or adjustments relative to the award, including but not limited to the Department’s right to disallow costs or to recover funds later determined to be due the Federal Government. *See* 2 CFR §§ 200.343 (Closeout) and 200.344 (Post-closeout adjustments and continuing responsibilities).

Appendix A: Sample Business Official's Notice to Submit Documentation

[mm/dd/yyyy]

[Organization Name]
Attn: _____
Recipient Address

Reference: Award Number:
Program Title:

Dear [Business Official Name or Representative of the Recipient]:

This notice is regarding the closeout documents for the subject award. In accepting the award, [insert recipient name] agreed to comply with the Department of Commerce's (DOC) policies, including the requirement for submitting (final) reports in a timely manner. Despite previous efforts, the following report(s) are now delinquent (select as appropriate from this list):

* Final Financial Status Report (SF-425)

* Final and/or Quarterly Progress Report as applicable

* Equipment Inventory List Authorization/Purchase

* Final Invention Statement and Certification: As applicable/required

* Audit(s): As applicable/required

* Other Agency specific required documents

Please submit by e-mail in PDF format the document(s) requested to _____. If electronic transmissions are not available, hardcopy submissions are acceptable to the following address:

_____ Grants Office
Attn: _____, Grants Management Specialist

Failure to comply with the terms and conditions of the award, including but not limited to the award's closeout requirements, may result in appropriate enforcement action under the award, including but not limited to termination of the award and the establishment of an account receivable against the recipient organization. Moreover, the failure to comply with the award's closeout requirements may have a negative impact on future funding from the Department of Commerce.

[INSERT THIS PARAGRAPH FOR ACTIVE AWARDS] By way of this letter and in accordance with 2 CFR Part 200, your organization is hereby notified that [insert grant-making operating unit] intends to unilaterally terminate this award for material noncompliance, unless the information and documentation set forth above is received within 30 days of the date of this letter.]

Please direct any questions regarding this matter and, also, send any notice(s) that the recipient has filed for federal bankruptcy protection to the above-referenced point of contact.

Sincerely,

_____
Grants Officer

Appendix B: Sample Missing Data Report and Due Diligence Checklist

Recipient Name:	
Project Title:	
Award Number:	
Project Period: **[mm/dd/yyyy] to [mm/dd/yyyy]**	

Missing Data Report Instructions:
In the table below, document missing files, letters, reports or other requirements. An "Action" includes any of the following: telephone call/message, e-mail, FAX, meeting, or any other form of communication made to obtain the missing document.

Missing Item/File	Action	Date [mm/dd/yyyy]	Result/Outcome	Remarks and/or Comments

Appendix B: Sample Missing Data Report and Due Diligence Checklist (continued)

Due Diligence Checklist Instructions:
Complete the checklist below to document the efforts made to contact the recipient.

Action	**Date** [mm/dd/yyyy]	**Result/Outcome**	**Remarks and/or Comments**
Contact attempt – email			
Contact attempt – telephone			
Certified mail			
SAM search			
Secretary of State website search			

Grants Officer Name: ***(Type or Print):***	***Team Lead Name:*** ***(Type or Print):***
(Signature)	*(Signature)*

Appendix C: Sample Unilateral Termination and/or Unilateral Closeout Memorandum

Memorandum

Date: [mm/dd/yyyy]

To: [Insert Grants Team Leader's Name]

From: [Insert Grants Management Official's Name]

Subject: Unilateral Termination and/or Unilateral Administrative Closeout
Recipient Name:
Award Number:
Budget and Project Periods: [mm/dd/yyyy] through [mm/dd/yyyy]

In accordance with Chapter 12 of the Department of Commerce Grants and Cooperative Agreements Manual (Award Closeout), the Grants Specialist assigned to this award has made reasonable efforts to obtain the outstanding information and documentation from the recipient. Based on these due diligence efforts, as documented in the official award file for this project this award is being unilaterally terminated and/or is being unilaterally closed out.

The Finance/Accounting Office is being advised of this action, with a corresponding request that the undisbursed award funds in the total amount of $_____ be deobligated from the award. [Additionally, an account receivable for the total disbursed award funds will be established in the amount of $_____.]

_____ _____
Grants Officer Date

Attachment: Missing Data Report and Due Diligence Checklist

13. AUDITS

A. Audit Requirements

Subpart F to 2 CFR Part 200 (Audit Requirements) implements the Single Audit Act Amendments of 1996, 31 U.S.C. § 7501 note, establishing uniform audit requirements for non-Federal entities that administer Federal awards. To the extent that audits performed in accordance with Subpart F meet DOC needs, DOC shall rely upon and use such audits. In accordance with the DOC ST&Cs, for-profit and other organizations not covered by the audit provisions of Subpart F shall be subject to the audit requirements as stipulated in the award or sub-award document. In accordance with 2 CFR § 200.501(d), a non-Federal entity that expends less than $750,000 annually in Federal awards is exempt from Federal audit requirements except as noted in 2 CFR § 200.503 (Relation to other audit requirements), unless a program-specific audit is required by a special award condition and funded by the award.

1. Organization-Wide Audits. Organization-wide audits shall be performed in accordance with the Single Audit Act Amendments of 1996, 31 U.S.C. § 7501 note, as implemented by 2 CFR Part 200, Subpart F. Recipients that are subject to Subpart F and that expend $750,000 or more annually in Federal awards shall have an organization-wide audit performed in accordance with Subpart F except when they qualify and elect to have a program-specific audit performed in accordance with exceptions in the Subpart. Organization-wide audits will generally be conducted annually, or biannually as authorized under 2 CFR § 200.504 (Frequency of audits).

2. Program-Specific Audits. Program-specific audits are allowable under Subpart F in certain circumstances in lieu of the organization-wide audit. Under 2 CFR § 200.501(c), when an auditee expends Federal awards under only one Federal program (excluding R&D) and the Federal program's statutes, regulations, or the terms and conditions of the Federal award do not require a financial statement audit of the auditee, the auditee may elect to have a program-specific audit conducted in accordance with 2 CFR § 200.507 (Program-specific audits). A program-specific audit may not be conducted for research and development unless all of the Federal awards expended were received from the same operating unit, or the same operating unit and the same pass-through entity, and the Grants Officer or appropriate representative of the pass-through entity in the case of a subrecipient, approves a program-specific audit in advance. Program-specific audits will be conducted annually unless otherwise authorized under 2 CFR § 200.504 (Frequency of audits).

3. Submission of Audit Report and Data Collection Form.

a. Requirements for submission of audit reports, including instructions for data collection forms, are set forth in 2 CFR §§ 200.507 (Program-specific audits) and 200.512 (Report submission), and DOC ST&Cs.

b. The Non-Federal award recipient is responsible for notifying the Grants Officer of the amount of Non-Federal awards (including all DOC and non-DOC awards) that the Non-Federal entity expended during its fiscal year, within 90 days of their fiscal year end, as per Subpart F of 2 CFR Part 200.

B. Other Audits

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

1. Audits of For-profit, Organizations, Sole Proprietors, and Individuals. A for-profit organization, sole proprietor, or individual receiving a DOC award must have a program-specific or other audit performed where the federal share amount awarded is $750,000 or more over the duration of the project period, or as specified in the award. The DOC award may include a line item in the budget for the cost of the audit. If DOC does not have a program-specific audit guide available for the program, the auditor should follow Generally Accepted Government Auditing Standards (GAGAS) and the requirements for a program-specific audit as described in 2 CFR Part 200, Subpart F, if applicable. A copy of the program-specific audit shall be submitted to the Grants Officer at the address specified in the award document.

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

3. Audit Required by the Award. When an audit is required under a special award condition, the recipient will usually make the arrangements for the audit. The audit shall be performed in accordance with a program-specific audit guide, if one is available for that program, or GAGAS and the requirements for a program-specific audit as described in Subpart F of 2 CFR Part 200, if applicable. The recipient shall submit copies of program-specific audits in accordance with the guidance in the program-specific audit guide. If no guide is available, a copy of the audit shall be submitted to the Grants Officer at the address specified in the award document.

C. Access to Recipient Records

Under the Inspector General Act of 1978, as amended, 5 U.S.C. App. 3, § 1 *et seq.*, an audit of the award may be conducted at any time. The Federal awarding agency, Inspectors General, the Comptroller General of the United States, and the pass-through entity, or any of their authorized representatives, must have the right of access to any documents, papers, or other records of the non-Federal entity which are pertinent to the Federal award, in order to make audits, examinations, excerpts, and transcripts. The right also includes timely and reasonable access to the non-Federal entity's personnel for the purpose of interview and discussion related to such documents. *See* 2 CFR § 200.336 (Access to records).

D. Audit Resolution

1. In accordance with DAO 213-5, as revised on May 22, 2015, Department and operating unit personnel shall act promptly to resolve both the financial and nonfinancial issues identified in an audit report. Comments, arguments, and evidence (if any) submitted by the auditee and the operating unit shall be considered in resolving the findings. A DOC decision on the resolution of audit findings and recommendations will be made in accordance with the procedures and within the specified timeframes identified in DAO 213-5.

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

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

4. Disputes arising from audit resolution, which cannot be resolved at the bureau or Department level shall be decided in accordance with the appeal procedures and specified time frames outlined in DOC's "Policies and Procedures for Resolution of Audit-Related Debts," 54 Fed. Reg. 4053 (January 27, 1989), as clarified and updated in DAO 213-5 (May 22, 2015). The appeal procedure is the last opportunity for auditees to provide evidence to support their contentions. The DOC will not accept any submission from a recipient regarding an appeal after the established deadline, unless requested by the Grants Officer, the OIG, or the OGC. After the Department renders a decision on an appeal, there are no other administrative appeals available within DOC.

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

6. Operating units are responsible for submitting a monthly update of all unresolved audits to OAM/GMD by the third Friday of each month.

E. Audit Implementation

Audit follow-up and implementation shall be conducted in accordance with the requirements of the Inspector General Act of 1978, as amended, 5 U.S.C. App. 3, § 1 *et seq.* and Subpart F of 2 CFR Part 200, as implemented by DAO 213-5.

14. ESTABLISHMENT AND COLLECTION OF FINANCIAL ASSISTANCE-RELATED DEBTS

A. Standards for the Establishment and Collection of Debts

In accordance with the DOC credit and debt management procedures, debts owed to the DOC, including to its operating units, shall be properly and promptly established, billed, and collected. The authorities listed below must be adhered to in the establishment and collection of debts related to DOC grants and cooperative agreements:

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

2. DOC debt collection regulations set forth in 15 CFR Part 19 (Commerce Debt Collection);

3. 2 CFR § 200.345 (Collections of amounts due);

4. DAO 213-5 (Audit and Evaluation Resolution and Follow-up);

5. DOC Credit and Debt Management Operating Standards and Procedures Handbook (Debt Management Handbook);

6. OMB Circular A-129 Revised (Policies for Federal Credit Programs and Non-Tax Receivables); and

7. Any other relevant laws, regulations, OMB circulars, and DOC policies, including any DOC operating unit-specific policies and procedures.

B. Establishment of a Debt

1. Debts owed to the Department are often established as a result of a financial assistance audit resolution between the DOC and a non-federal entity. The establishment of an audit-related debt must follow the substantive and due process notice requirements set forth in 31 U.S.C. § 3716(a), 15 CFR § 19.4, DAO 213-5 and Chapter 8 of the Debt Management Handbook.

2. Debts owed to the Department may be established against a non-federal entity for reasons other than the resolution of financial assistance audits, such as the disallowance of costs by a Grants Officer, or failure of a non-federal entity to meet cost sharing required by the award. In such cases, the Grants Officer will provide proper notification to the recipient in accordance with 15 CFR § 19.4 and Chapter 8 of the Debt Management Handbook, and will coordinate the billing of the recipient with the appropriate accounting or other office.

3. Both the audit resolution process and the debt collection process require that debtors be given notice concerning the debt and an opportunity to inspect and to copy non-privileged records pertaining to the DOC debt. All reasonable efforts should be made to satisfy the requirements of both in a single process. In particular, the audit resolution determination should, wherever reasonably possible, also serve as a demand and notice of intent letter as required by the DCA, as amended. *See* 15 CFR § 19.4 for the elements that must be contained in the notice and demand letter; *see also* Debt Management Handbook, Chapter 8. A sample notice and demand letter is set forth in Exhibit A to this Chapter.

C. Debt Collection

1. DOC entities shall fairly and aggressively collect debts owed to DOC in accordance with the DCA, 15 CFR Part 19 and Chapter 8 of the Debt Management Handbook. In this connection, DOC operating units shall use Debt Work Groups for follow-up with debtors and for the collection of delinquent debts.

2. A DOC financial assistance-related debt becomes delinquent when payment in full has not been made by the due date specified in the operating unit's initial written demand for payment, generally between 30 and 60 calendar days from the date upon which the debt is established, unless other payment arrangements have been made between the operating unit and the debtor (*e.g.*, an installment payment plan).

3. Delinquent debts shall be assessed the following charges (*see*, 31 CFR § 901.9, 15 CFR Part 19.5, and the Debt Management Handbook Chapter 8):

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

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

c. An administrative charge (currently $25.00) shall be applied to cover processing and handling of the amount due.

d. In most cases, interest, penalties and administrative costs will continue to accrue during any period when collection has been suspended for any reason (e.g., a debtor requested an audit appeal) (*see* 15 CFR § 19.5(c)).

e. For specific information on waiving late charges, whether additional interest, penalty charges, or administrative charges, refer to 15 CFR § 19.5(b) and Chapter 8 of the Debt Management Handbook.

4. The Grants Officer shall advise the recipient that payment of debts cannot be from funds received from DOC or from other Federal financial assistance awards (including program income generated under such awards), or result in a reduced level of program activity.

5. Section 5 of the Digital Accountability and Transparency (DATA) Act of 2014 amends 31 U.S.C. § 3716(c)(6), Administrative Offset, and requires agencies to refer to Treasury valid, delinquent nontax

debts for the purpose of administrative offset at 120 days - 60 days earlier than the previous 180-day requirement. DOC is cross serviced by Treasury for administrative offset. As a result, effective October 1, 2015, all debts delinquent by more than 120 days must be referred to Treasury for cross-servicing, which will allow for referrals to Treasury for administrative offset. *See* Debt Management Handbook, *Chapter 8, Section 1.0.* DOC debts delinquent for less than 120 days may be transferred for cross-servicing at the election of DOC. The appropriate official must comply with notification requirements contained in 15 CFR Part 19, before debts are transferred to Treasury for action. *See also* 31 CFR Part 901 (Standards for the administrative collections of claims).

D. Impact of Delinquent Federal Debts on Award Eligibility

1. Delinquent debtors are ineligible for and barred from obtaining Federal loans, loan insurance or guaranties. As required by 31 U.S.C. § 3720B and 31 CFR § 901.6, Commerce entities will not extend financial assistance in the form of a loan, loan guarantee, or loan insurance to any person or organization delinquent on a debt owed to a Federal agency. This prohibition does not apply to disaster loans, unless otherwise required by statute, and DOC entities may extend credit after the delinquency has been resolved. *See* 15 CFR § 19.17(a) for situations where a waiver of ineligibility may be granted.

2. A debtor who has a judgment lien against the debtor's property for a debt to the United States is not eligible to receive grants, loans or funds until the judgment is paid in full or otherwise satisfied. This prohibition does not apply to DOC funds that the debtor is entitled to as a beneficiary. *See* 15 CFR § 19.17(b) for situations in which this prohibition may be waived.

3. Unless otherwise prohibited by law and in accordance with 15 CFR § 19.17(c), DOC entities with the authority to do so under the circumstances should deny, suspend or revoke licenses, permits or other privileges for any inexcusable or willful failure of a debtor to pay a debt. The DOC entity responsible for distributing the licenses, permits or other privileges will establish policies and procedures governing suspension and revocation for delinquent debtors.

4. In accordance with 15 CFR § 19.17(d), it is the policy of DOC that no award of Federal funds shall be made to an applicant who has an outstanding delinquent DOC debt until:

   a. The delinquent account is paid in full;

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

   c. Other arrangements satisfactory to DOC are made.

5. Once an outstanding receivable becomes a delinquent Federal debt, no further awards to the recipient may be considered until the debt is paid, except in circumstances cited in subparagraph 4, above, and discussed in subparagraph 6, below. This includes debts that have been written off, but not yet closed out. Although a delinquent debt becomes inactive once it is written off and the operating unit takes no further action to collect it, the debt is still owed to the Federal Government. If, however, the debt is then closed out by the Finance/Accounting Officer, no further collection action may be taken after the debt is reported to the IRS on Form 1099-G (Certain Government Payments) as income to the debtor.

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

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

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

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

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

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

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

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

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

(3) When a determination is made that:

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

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

The Program Officer shall prepare and sign a written justification for the concurrence of the Grants Officer, who shall maintain the documentation in the official award file. The justification must have the concurrence of the Head of the Operating Unit or designee and be included in the official award file.

E. Exceptions

The procedures set forth in this chapter are applicable to all operating units except those that are not subject to the disposition of claims under the DCA or its implementing regulations. Where an operating unit is not required by law to follow DCA procedures, it must develop and follow its own alternative procedures, but to the extent feasible, it also must comply with and employ the guidelines set out in this chapter. As set forth in Debt Management Handbook, Chapter 8, Section 1.0, an operating unit may follow procedures that differ from those in Chapter 8 of the Debt Management Handbook (which are summarized in this Chapter of the DOC Grants Manual) only if approval of alternative procedures has been granted in writing by the Deputy Chief Financial Officer and Director for Financial Management. Any request for authority to deviate from these procedures must be submitted to the Deputy Chief Financial Officer and Director for Financial Management, and be accompanied by the proposed alternative in detail.

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

CERTIFIED MAIL – RETURN RECEIPT REQUESTED [Optional]

[Date]

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

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

Dear _____:

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

Debt and Demand for Payment

There is currently owing and unpaid by the Recipient to the Agency a debt, described above, in the amount of $_____ principal, plus interest thereon at the rate of ____ % per annum. Demand is hereby made for payment in full within 30 calendar days of the date of this Letter (Due Date). The amount demanded should be paid in one lump sum by the Due Date in accordance with the bill enclosed as Exhibit B. [Obtain bill from agency setting up the account receivable. Assure that the content of the bill does not conflict with the terms of this Letter.]

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

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

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

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

Collection Actions

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

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

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

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

Inspection and Copying of Documents

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

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

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

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

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

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

To request to enter into a repayment agreement, Recipient must complete and return the Financial Statement form [U.S. Department of Justice OBD-500 or OBD-500C for individual or corporate recipients, respectively] [Insert appropriate form designation.], enclosed as Exhibit C [D if special documents related to the debt are attached as discussed above.], together with a proposed repayment

schedule or, if Recipient is unable to pay the full amount of the debt, a settlement proposal in lieu of the schedule. This submission must be timely made to the Agency at the address specified below for filing a Request for Reconsideration. The Agency will review all information and materials submitted in a timely manner and any obtained from other sources (e.g., credit reports), and, in due course, issue a Reconsideration Determination to Recipient.

Request for Reconsideration

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

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

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

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

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

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

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

[Other Rights] [Add when applicable.]

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

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

Civil and Criminal Penalties

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

Agency Point of Contact

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

Sincerely,

_____
[Name and Title of Responsible Official]

Enclosures

cc: _____, Principal Assistant IG for Audit and Evaluation

15. GRANTS ADMINISTRATION POLICIES AND REQUIREMENTS

At a minimum, operating units, recipients and subrecipients, as applicable, shall comply with the policies and requirements outlined below. Additionally, the DOC ST&Cs and Section E, Chapter 2 of this Manual outline additional government-wide requirements operating units, recipients and subrecipients shall use in the administration of all DOC financial assistance awards.

A. Anti-Deficiency Act

The Anti-Deficiency Act (31 U.S.C. § 1341) prohibits making or authorizing the making of an expenditure or obligation in excess of amounts available or involving the government in an obligation in advance of an appropriation unless authorized by law. Because awarding financial assistance is an obligation of Federal funds, financial assistance funds may not be awarded by DOC unless the funds are currently available in a DOC appropriation or fund. For awards to be funded with amounts transferred from another agency, the transfer agreement must be complete prior to approval of the award by DOC. Questions concerning the Anti-Deficiency Act should be referred to the OGC General Law Division.

B. *Bona Fide* Needs Rule

The *bona fide* needs rule provides that an appropriation which is limited for obligation to a definite period is available only for payment of expenses properly incurred during the period of availability or to complete awards properly made within that period (31 U.S.C. § 1502(a)). This rule applies to all Government activities carried out with appropriated funds. An agency's "need" in the grant context is to make a grant in furtherance of the goals Congress hoped to achieve when it enacted the grant-making authority. In this context, the agency's "need" is to make a grant, and the grantee's use of grant funds has no relevance in the assessment of agency needs. For that reason, a *bona fide* needs analysis in the grant context focuses on whether the grant was made during the period of availability of the appropriation charged and furthers the authorized purpose of program legislation. *See* B-289801, December 30, 2002. The determining factor is that the grants, at the time of award, further the objective of the grant legislation.

C. Conflicts of Interest

It is the policy of DOC to maintain high standards of conduct to prevent real or apparent conflicts of interest in connection with awards. A conflict of interest exists when a person participates in a matter which is likely to have a direct and predictable effect on his or her personal or financial interests. A conflict also exists where there is an appearance that a person's objectivity in performing his or her responsibilities is impaired. An appearance of impairment of objectivity could result from an organizational conflict where, because of other activities or relationships with other persons or entities, a person is unable or potentially unable to render impartial assistance or advice to the government. A conflict of interest could also result from non-financial gain to the individual, such as benefit to reputation or prestige in a professional field. Conflicts could inadvertently occur as program officials carry out their responsibilities during the evaluation and selection process, during the review process, and as recipients carry out their responsibilities under awards. Conflicts of interest should be avoided, but if they are discovered, they should promptly be resolved through disqualification, divestiture, waiver or other appropriate measures. Several requirements are applicable to the activities of individuals and organizations in the context of financial assistance.

1. Federal Employees

a. Under a criminal statute (18 U.S.C. § 208) and Government-wide Standards of Conduct (5 CFR Part 2635), a Federal employee may not participate in an official capacity in a matter which is likely to have a direct and predictable effect on his or her financial interests. An employee also should not participate in the evaluation or selection process in any circumstance where his/her participation would create the appearance of loss of impartiality, including situations in which one of the parties is, or is represented by, a member of the employee's household, the employee's relative or a person with whom the employee has or is seeking business relations. Any situation which creates an actual conflict or the appearance of a conflict should be brought to the attention of the Program Officer for appropriate action. Depending on the particular circumstance, resolution may consist of disqualification, divestiture, waiver, or other appropriate measures.

b. In addition to these restrictions, Federal employees should not participate in any activities that would result in providing any person or organization a competitive advantage. For example, an employee, other than as part of his or her official duties, should not assist an applicant for a competitive financial assistance program with the preparation of a proposal to be submitted to the employee's agency. Additionally, an employee, other than as part of his or her official duties, may not submit applications for financial assistance to DOC on behalf of any other person or entity.

2. Review Panel Members. In order to ensure the integrity of the application review process, it is essential that reviewers be free from actual or apparent conflicts of interest or appearance of impairment of objectivity. In order to identify the existence of a conflict of interest, program officials must provide each reviewer with a certification form which sets forth standards for determining the existence of a conflict of interest and requires the reviewer to notify the Program Officer of any potential or actual conflicts. When a conflict or potential conflict of interest is identified, it must be resolved by the Program Officer through appropriate action, such as disqualification, divestiture, or waiver.

D. Consulting Services

Grants and cooperative agreements are not to be used as legal instruments for consultant services for the purpose of performing in-house organizational studies or other studies for internal government use unless allowed by statute.

E. Coordination with DOC and Other Federal Agencies

In order to address duplication of effort in work under DOC awards, projects will be coordinated as appropriate with other Federal agency programs, as well as with other operating units within DOC. Appropriate coordination shall be conducted for any project whose scope of work overlaps, relates to, or duplicates the program mission of another Federal program before an award is approved for funding. The DOC supports interagency programs to provide support for research and other programs. It is, therefore, sometimes necessary to accommodate the requirements of partner agencies in awards. DOC will be as flexible as possible in consideration of partner agency needs for application requirements, review and selection procedures and final award notifications. As long as DOC policies and procedures are followed, the administration of interagency programs involving DOC may include requirement elements from other Federal agencies. In cases where funds are transferred from other Federal agencies, documentation of agreements, including but not limited to, any agreements pursuant to the Economy Act or Memoranda of Understanding/Agreement, must be included in award files.

F. DOC Forms

DOC grants administration forms approved for use with grants and cooperative agreements are listed below. Operating units must ensure that these are the forms used for their prescribed purposes. These forms are in addition to any government-wide Standard Forms (SF).

1. Form CD-450 - Financial Assistance Award

2. Form CD-451 - Amendment to Financial Assistance Award

3. Form CD-478 - Federal Assistance Information Sheet

4. Form CD-511 - Certifications Regarding Lobbying

5. Form CD-512 - Certification Regarding Lobbying – Lower Tier Transactions

6. Form CD-571 - Reviewer Conflict of Interest and Confidentiality Certification for Non-Governmental Peer Reviewers

G. Freedom of Information Act (FOIA)

The Freedom of Information Act (FOIA) (5 U.S.C. § 552) generally provides that any person has a right of access to Federal agency records, except to the extent that such records (or portions thereof) are protected from disclosure by exemptions. The DOC regulations implementing the FOIA are found at Subpart A of 15 CFR Part 4 (Disclosure of Government Information) which sets forth rules for DOC and operating units to make requested materials, information, and records publicly available under FOIA. Unless prohibited by law and to the extent permitted under the FOIA, contents of applications and proposals submitted by successful applicants may be released in response to FOIA requests. In addition, 2 CFR § 200.315 (Intangible property) requires that research data relating to published research findings produced under an award that were used by the Federal Government in developing an agency action that has the force and effect of law will be made available to the public through the procedures established under the FOIA.

H. Management and Institutional Grant Reviews

1. Management Reviews. OAM will conduct reviews to evaluate the internal grants administration policies and procedures of the operating units, including field or remote locations. NIST, NOAA, and EDA grants operating units will be evaluated once every three years. More frequent reviews will be scheduled when justified by operational issues. At a minimum, the review team should include members from the OGC as well as knowledgeable representatives from operating units other than the unit under review. The scope of the review will include but not be limited to compliance with applicable public laws, regulations, OMB circulars, this Manual, and internal grants administration policies of the operating unit. The review team's report will be sent to the operating unit for comment prior to publication.

2. Reviews of Institutional Grant Awards. Each financial assistance program that has been authorized by the Grants Officer to make institutional awards must establish procedures in consultation

with the Grants Officer for an independent review and evaluation of the program and/or the institutional awards, the performance of the institutional award recipients, and the effectiveness of the program and of the recipients in meeting the objectives and goals of the program. At least once every five years a review must be conducted and the results of the review, including any findings and recommendations, shall be submitted to the Grants Officer in a timely manner, with a copy of the report provided to OAM, as appropriate.

I. Privacy Act

The Privacy Act (PA) (5 U.S.C. § 552a) provides an individual with a legal right to access records about herself or himself (subject to exemptions) and the right to request amendment of any record in that individual's PA file that is inaccurate, irrelevant, untimely, or incomplete. The PA also prohibits the unauthorized disclosure of PA protected information. The DOC's regulations implementing the PA are found at Subpart B of 15 CFR Part 4 (Disclosure of Government Information).

J. Recipient Name Change

A recipient organization may decide to change its legal name without changing any other aspect of the award (*e.g.*, there are no asset or ownership changes). In this instance, the Grants Officer should direct the recipient to provide documentation of the name change, such as a copy of a certificate from a Secretary of State verifying the change for an incorporated party. If the name change is implemented by common law rather than by legal action, the Grants Officer may instead accept an attestation by the Chief Executive Officer, President, or equivalent official of the organization, stating that the change occurred. The Grants Officer will amend the award to reflect the new name.

K. Requests for Prior Approval

When a recipient is required to obtain approval before taking certain actions with respect to a grant or cooperative agreement, the Grants Office shall provide a decision in writing to the recipient within 30 days of receipt by the awarding agency. If a decision cannot be made within 30 days, the office holding the request must acknowledge receipt and inform the recipient in writing within 30 days when a decision can be expected.

L. Statutory Authority

Each financial assistance proposal must be awarded under the proper authorizing statute. The Federal Grant and Cooperative Agreement Act (31 U.S.C. §§ 6301-6308) does not provide legislative authority to fund financial assistance awards. It merely provides the basis for selecting the appropriate funding instrument.

M. Transfer of Award

In certain circumstances, the Program Officer, Grants Officer and the recipient may agree that it would be in the best interests of the government and the recipient for an award to be transferred by DOC to a replacement recipient.

1. When the two organizations, the Program Officer and the Grants Officer agree that it is in the best interests of the Federal Government and the intended beneficiaries of the award to allow the transfer, the Grants Officer will amend the award to transfer it to the new recipient organization. In such cases, the Program Officer must submit a request to the Grants Officer to change recipients. The

request shall include documentation attesting to the original recipient's and proposed replacement recipient's consent to the proposed transfer. Such documentation should include a written agreement between the original recipient and the proposed replacement recipient executed by authorized representatives of both parties. In this instance, the organization relinquishing the award will be liable for all programmatic activities and all funds expended under the award prior to the effective date of the transfer. The relinquishing organization will be responsible for all closeout activities, including having an audit performed, if required, for the award prior to the effective date of the transfer. The organization to which the award is transferred must submit an application (if appropriate) which includes a proposal and detailed budget narrative (a maximum of an original and two copies may be required by the Federal awarding agency). The following forms must also be submitted, as applicable: Forms SF-424, SF-424A, SF-424B, SF-424C, SF-424D, CD-511, SF-LLL, or any other approved program specific forms. The Program Officer will review all documents and make a recommendation as to the applicant's adequacy to meet program requirements which will be forwarded to the Grants Office along with the request. This review will be the same as the review of any new application, including a responsibility check on the applicant, unless that function is performed by the Grants Office. The language in the amendment must clearly delineate the responsibilities of both parties to the transfer. The Grants Officer will consult with the FALD on the legal merits of the proposed transfer.

2. Novation Agreement. A novation occurs when one organization takes over all of the liabilities and responsibilities of another organization. This might occur as a result of a merger, one organization buying another, an organization going out of business and entering into an agreement with another organization to take over its business, or a variety of other reasons.

a. When an organization seeks to transfer an award to another organization as a result of a novation agreement, the two organizations should submit a proposed novation agreement to the Grants Officer, signed by the CEOs, Presidents, or equivalent fiduciary officers of the two organizations. The novation agreement should state that all rights, duties and obligations of the award are transferred without further claim and that the new recipient agrees to accept them. Furthermore, the new recipient must meet statutory and regulatory eligibility requirements. In the case of successor-in-interest organizations, the recipient shall submit relevant documentation reflecting the relationship between the recipient and the successor organization.

b. The Grants Officer will consult with the FALD on the legal merits of the proposed novation. If the novation is determined to be in order, the Grants Officer will request that the proposed new recipient submit an application and an amended proposal (if appropriate) to effect the change in award recipient. The application must include an original proposal and detailed budget narrative (as well as two copies if required by the Federal awarding agency). The following forms must be submitted, as applicable: Forms SF-424, SF-424A, SF-424B, SF-424C, SF-424D, SF-511, SF-LLL, or any other approved program specific forms. The Grants Officer will then obtain a review and written recommendation regarding the proposed novation from the Program Officer as to the programmatic efficacy of the proposed agreement. The Program Officer should examine whether the scope of work has changed or if there are other issues arising that would put the initial competitive selection in jeopardy because of differences between the original and the new recipient and review any related budgetary changes. The Grants Officer must make a responsibility determination regarding the new recipient. If the Grants Officer then determines that the award

should continue, he/she will issue an amendment to the award to effect the transfer to the subsuming organization.

N. Transfer of Funds

When other agencies transfer funds to DOC for financial assistance programs, DOC must generally comply with legislative requirements imposed on the transferred funds (*e.g.*, restrictions contained in a transferring agency's appropriation act and/or authorization act). If a statute places specific requirements on funds, those requirements generally remain with the funds upon transfer. When there is a specific limitation or requirement placed on the funds transferred by law of such transferring agency, the DOC award may have to include that limitation or requirement along with DOC terms and conditions, as appropriate. It is also possible that DOC may have legislation or requirements applicable to funds transferred to it and such requirements would need to be noted in the special award conditions, as appropriate.

[**Note**: When DOC provides Federal funds to another Federal agency that is administering a collaborative project with the Department, the agreement governing that transfer of funds must stipulate that DOC funds shall not be used to pay for management fees in excess of costs or profits in a financial assistance award, unless statutorily authorized. *See also* Chapter 9 of this Manual.]

O. Waivers and Deviations

Any request for waivers and/or deviations from the requirements of this Manual must be submitted in writing to the Director, OAM, by the Head of Operating Unit or designee. The request must include a full explanation of the reason for the request and justification for the deviation or waiver. OAM will review the request, coordinate its review with OGC and other appropriate offices, and provide a response in accordance with Chapter 4 of this Manual. Requests for waivers and deviations from the requirements will be approved only in extraordinary circumstances and when such approval will be in the best interest of the Federal Government. Proposed deviations from DOC regulations (e.g., uniform administrative requirements) may require that OAM seek prior approval from OMB.

16. CONSTRUCTION AWARDS

A. Purpose.

This chapter applies when activities under a DOC award involve construction, as described in Section C. below. Construction awards are primarily made by three operating units within DOC: EDA, NOAA and NIST. This chapter describes the procedures for compliance, reporting, record-keeping, and administrative requirements that generally apply to DOC construction awards. Contact the specific operating unit for more operating unit-specific information and also see Appendix A (Applicable Regulations, OMB Circulars and Agency-specific Guidance) to this chapter for applicable authorities and for specific operating unit requirements. Also, when an appropriations statute or other direct statutory authority requires an operating unit to provide Federal assistance for a specific project or to a specific organization or individual, FALD should be consulted to determine which provisions of this chapter apply.

B. Authority

Construction activity is allowable only when program legislation includes specific authority for construction and/or when the DOC operating unit specifically authorizes construction activity.

C. Scope of Chapter

1. Construction. This chapter applies to an award in which the primary purpose of the project or program is construction, such as the construction of new buildings, completion of shell space in existing buildings, renovation or rehabilitation of existing buildings, and construction or development of real property infrastructure improvements (e.g., site preparation, utilities, streets, curbs, sidewalks, parking lots, other streetscaping improvements, etc.).

2. Construction vs. Alterations. An award is generally considered a construction award when the primary purpose of the DOC financial assistance is to support construction activities, as defined in this chapter. In contrast, alteration activities incidental to the primary purpose of an award is generally not considered to constitute a construction award under this chapter. For example, if the primary purpose of an award is to allow a recipient to conduct educational or business seminars, the renovation of an educational exhibit or staging area would not be considered construction under this chapter.

D. Policy

1. Grant Recipients as Trustees and the Federal Interest in Grant-Acquired Property. Property that is acquired or improved, in whole or in part, with Federal assistance is held in trust by the recipient for the purpose(s) for which the award was made and for the estimated useful life of the project, during which period the DOC operating unit retains an undivided equitable reversionary interest in the property (the Federal Interest). Under the United States Constitution (Article I, Section 8, Clause 1), Congress has the power to appropriate Federal funds. Incident to this power is the right "to further broad policy objectives by conditioning receipt of those Federal moneys upon compliance by the recipient with Federal statutory and administrative directives." *South Dakota v. Dole*, 483 U.S. 203, 207, quoting *Fullilove v. Klutznick*, 448 U.S. 448, 474 (1980). *See also* Article IV, Section 3, Clause 2, regarding Congress' power to make rules regarding property of the United States. The requirement that property purchased or improved with Federal funds continue to be used for the original statutory purpose for

which it was acquired is embodied in the Uniform Guidance at 2 CFR §§ 200.310 (Insurance coverage) - .316 (Property Standards).

The U.S. Government Accountability Office explains the "Federal Interest" concept in *Principles of Federal Appropriations Law*, 3d Ed., Vol. II, Ch. 10, Pt. D (2006):

> [A] grantee holds grant funds, and property purchased with those funds, in the capacity of a trustee. For example, in *Joliet-Will*, 847 F.2d at 432 [*In re Joliet-Will County Community Action Agency*, 847 F.2d 430 (7th Cir.1988)], the court held that the grantee was essentially "a trustee, custodian, or other intermediary, who . . . is merely an agent for the disbursal of funds belonging to another," and that the grantee's 'ownership' was nominal, like that of a trustee. The trust concept finds support in an early Supreme Court decision, *Stearns v. Minnesota*, 179 U.S. 223 (1900), a land grant case in which the Court discussed the grant in trust terms.

Accordingly, the recipient holds grant funds and DOC-financed property in trust to serve the purpose of the operating unit's program for which the Financial Assistance Award was made. The recipient's obligation to the Federal Government continues for the estimated useful life of the project, as determined by the operating unit. If it is determined that a recipient is failing to meet this obligation, the operating unit may assert its equitable reversionary interest in the project. However, the operating unit's non-assertion of its interest does not constitute a waiver thereof.

2. Eminent Domain. In making a discretionary award for a construction project, the operating unit will consider the policy on eminent domain set out in Executive Order 13406, (Protecting the Property Rights of the American People, June 28, 2006). As appropriate, the terms and conditions of the award will include appropriate provisions to ensure that the recipient agrees:

   a. Not to use any power of eminent domain available to the recipient (including the commencement of eminent domain proceedings) for use in connection with the project for the purpose of advancing the economic interests of private parties;

   b. Not to accept title to land, easements, or other interest in land acquired by the use of any power of eminent domain for use in connection with the project for such purposes; and

   c. Any use of the power of eminent domain to acquire land, easements or interests in land, whether by the recipient or any other entity that has the power of eminent domain, in connection with the project without prior written consent of the operating unit constitutes an unauthorized activity and/or use of funds under the award, and subjects the recipient to appropriate enforcement action by the Grants Officer, including but not limited to the disallowance of award costs and the termination of an award.

E. General Requirements

The following sections of this chapter contain requirements that are applicable to construction awards that originate in all Department operating units. The Appendices contain requirements specific to NOAA and EDA construction awards.

1. Recipient Responsibilities.

a. The recipient is responsible for complying with all Federal laws and regulations, Departmental policies, Executive Orders, and Office of Management and Budget (OMB) Circulars that are referenced in the Terms and Conditions, each as may be amended. These may include environmental requirements, applicable Federal cost principles and administrative, audit, programmatic, financial, and property management requirements. The recipient is responsible for supervising the design, bidding, construction, and operation of construction projects in compliance with the terms and conditions of an award, including requirements incorporated by reference into an award.

b. The operating unit will assist the recipient by providing information and guidance on the Federal requirements for each award, such as the information contained in this chapter, the references and forms listed in the Appendix (Section I), and direct guidance and assistance provided by operating unit project managers.

c. The Financial Assistance Award. The recipient should pay particular attention to the following portions of the Financial Assistance Award:

(1) The scope and description of the project as set forth in the award documents;

(2) All Federal requirements specifically listed or incorporated into the award that describe applicable Federal administrative requirements. These publications provide critical information on procurement, record-keeping, and cost principles, as well as other important administrative issues. Reprints of critical documents are available as indicated in the Appendix (Section I);

(3) The specific standard terms and conditions of the Financial Assistance Award applicable to the construction project; and

(4) Any special award conditions, which may contain conditions that must be satisfied prior to advertisement for bids, start of construction, disbursement of grant funds, or other critical events, as well as conditions that extend for the duration of the estimated useful life of the project.

Failure of a recipient to satisfy the terms and condition of an award may result in appropriate enforcement action by the Grants Officer, including but not limited to the disallowance of costs, or suspension or termination of the award and recovery of federal funds. In addition, such failure may have a negative impact on the recipient's ability to receive future funding from the Department. Special attention should be paid to the project development time schedule, which may only be extended as a result of a written request from the recipient for an amendment to the award and a corresponding written approval from the operating unit. The disbursement of grant funds for project activities (not including award closeout activities) is not permitted when a project has exceeded the time schedule unless the operating unit has given written approval for a time schedule extension.

2. Operating Unit's Responsibilities.

a. Pre-award Requirements. In preparing documentation for a financial assistance award for a construction project, the Program Officer should be familiar with the following requirements:

(1) Forms. Unless the operating unit uses other OMB-approved forms for construction, operating units shall use Form SF-424 (Application for Federal Assistance), Form SF-424C (Budget Information – Construction Programs), and Form SF-424D, (Assurances – Construction Programs), when the primary purpose of a project or program is construction or real property development.

(2) Construction Terms. For EDA construction awards, the below terms in subparagraphs (2)(a) – (h) or substantively similar terms shall be included in all awards. For construction awards of other DOC operating units, the below terms in subparagraphs (2)(a) – (h) or substantively similar terms shall also be required, except that the Grants Officer may provide an alternative means of providing public notice of the Federal Interest under subparagraph 2(b) below or, as warranted by the circumstances of a particular award, may forego the filing of a public notice of the Federal Interest but this does not alter the trust relationship by which the recipient holds title (*see* 2 CFR § 200.316 (Property trust relationship)). In this connection, requiring a recipient to provide public notice of the Federal Interest in DOC construction projects is a highly encouraged practice and should be required by the operating unit Grants Officer whenever feasible considering the totality of circumstances surrounding a specific construction project or group of similarly situated construction projects.

(a) Maintenance. The recipient agrees that, for the estimated useful life of the facility funded with this award, the project will be properly and efficiently administered, operated, and maintained for the purpose authorized by this award and in accordance with the terms, conditions, requirements, and provisions of the award. If the [operating unit] determines at any time during the estimated useful life of the project, that the project and any project property is not being properly and efficiently administered, operated, and maintained, the [operating unit] shall have the right to terminate this award for cause and pursue any other remedies allowed by law. *See* 2 CFR § 200.311 (Real property).

(b) Notice of Federal Interest. The recipient shall execute a covenant, property management agreement, mortgage or other statement of the Federal Interest in real property acquired or improved, in whole or in part, under a DOC financial assistance award, acceptable in form and substance to the operating unit, which must be placed of record in accordance with local law, with continuances (for fixture filings) and amendments filed as appropriate. The recipient must provide the operating unit with a written statement from a licensed attorney in the jurisdiction where the property is located certifying that the covenant, mortgage or other statement of the Federal Interest has been properly executed and duly recorded, as required under the award and in accordance with local law. The attorney's statement, along with a copy of the instrument reflecting the recordation of the Federal Interest, shall be returned to the Grants Officer. The recipient may not dispose of, modify the use of, or change the terms of the real property title, or other interest in the project site and facilities without permission and instructions from the operating unit. No funds under this award shall be released until the recipient has complied with this provision, unless other arrangements satisfactory to the operating unit are made.

(c) Compliance. The recipient shall comply, and must require each subrecipient or contractor, including lower tier subrecipients or subcontractors, to comply with all applicable Federal, state, and local laws and regulations.

(d) Energy Efficiency. The recipient shall apply, where feasible, sustainable, and energy efficient, design principles for the purpose of reducing pollution and energy costs and optimizing lifecycle costs associated with the construction.

(e) Signs. The recipient is responsible for constructing, erecting, and maintaining in good condition throughout the construction period a sign(s) satisfactory to the operating unit that identifies the project and indicates that the project is federally funded. The operating unit also may require that the recipient maintain a permanent plaque or sign at the project site with the same or similar information.

(f) Land, Easements, and Rights of Way. The recipient must disclose all pre-existing or contemplated encumbrances to the operating unit as they pertain to real property that will be acquired or contributed by a recipient or subrecipient pursuant to a DOC construction award. The operating unit will not accept any encumbrance that interferes with the construction, intended use, operation, or maintenance of, or the Federal Interest in, the project during its estimated useful life. Unless otherwise provided for in the award, prior to grant of the award and commencement of construction, or when requested by the operating unit, the recipient must furnish evidence, satisfactory in form and substance to the operating unit, that title to real property is vested in the recipient, and that it has obtained any rights-of-way, easements, State and local government permits, long-term leases, or other property interests. FALD should be consulted to the extent that a Grants Officer or Operating Unit has questions relative to a recipient's title interest in project property, whether a recipient has secured the requisite licenses, permits or other property interests for a project, or with respect to the nature and impact of any pre-existing or competing encumbrances to project property.

(g) Relocation Assistance. The provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (Pub. L. No. 91-646; 42 U.S.C. § 4601 *et seq.*), are applicable to each recipient of assistance from an operating unit. This Act provides assistance to persons, businesses, or farm operations affected by the acquisition, rehabilitation or demolition of real property acquired for a project financed wholly or in part with Federal assistance funds. It also requires compliance with specific guidelines pertaining to reimbursable costs incidental to such land acquisition.

(h) Tribal Employment Rights Ordinances. In accordance with Departmental policy, all operating units must recognize Tribal Employment Rights Ordinances (TEROs), which may provide for preferences in contracting and employment, in connection with its financial assistance awards. Tribal ordinances requiring preference in contracting, hiring, and firing and the payment of a TERO fee are allowable provisions under Federal awards and should be incorporated by the operating unit under its grants and contracts with American Indian and Alaska Native tribal governments. The payment of the TERO fee, which supports the tribal employment rights office to administer the preferences, should generally be allowable as an expense that is "necessary and reasonable for

proper and efficient performance and administration" of an award, as provided under the applicable cost principles set out in 2 CFR Part 200, Subpart E.

b. Post-award Requirements. The Grants Officer, in consultation with the Federal Program Officer, should ensure that construction awards contain appropriate post-award terms and conditions to help ensure the successful completion of the project by the recipient, as well as the protection and maximization of the DOC investment in the recipient's project. In this connection, below is a non-exhaustive list of post-award requirements for a Grants Officer and for Federal Program Officer to consider in developing appropriate terms and conditions for a construction award.

(1) Recipient Documentation. At a minimum, the recipient's records must fully disclose: (a) all project expenditures, (b) procurement actions, (c) compliance with the Terms and Conditions of the Financial Assistance Award, and (d) contractor compliance with applicable Federal requirements, and (e) such other records as identified in 2 C.F.R § 200.333 (Retention Requirements for Records), or in the terms and conditions of an award.

The operating unit needs to review documentation submitted by the recipient, ensure that all such documentation is complete, accurate and complies with all applicable award requirements, and, in consultation with the Grants Officer, ensure that any necessary or appropriate follow-up actions are taken.

(2) Reporting of Project Progress. Progress reports shall be due from the recipient on a regular basis and shall, at minimum, contain the following information:

(a) A comparison of actual accomplishments to the schedule established in the award;

(b) Reasons for delays in those cases where the schedule approved by the operating unit was not met;

(c) Any change to the purpose, nature, location, bona-fide need, neighborhood served, size, funding, or cost of the project;

(d) All change orders issued up to the date of the report and not previously reported to the operating unit; and

(e) Other pertinent information including, when appropriate, an analysis and explanation of the cost overruns or high unit costs.

In addition, between the required reporting dates, events may occur, such as problems, delays, or adverse conditions, that will materially affect the ability of the recipient to attain program objectives, prevent time schedules and goals from being met, or preclude the attainment of project work units by established time periods. The recipient shall be required to inform the operating unit as soon as possible of any event which has or that is expected to have a material impact on the project, including any favorable developments that enable the recipient to meet time schedules and goals sooner than anticipated or produce more work than originally projected. The recipient must

notify the operating unit of such events in the most expeditious way possible and then, if the original notification was not in writing, provide the operating unit with written notification, including a statement of the event or issue, a statement of the course of action contemplated to resolve the matter, and any Federal assistance needed to resolve the situation. The operating unit will review and respond appropriately to documentation disclosing these events.

(3) Pre-Construction Documentation. The operating unit reviews documentation regarding the following:

(a) Environmental Compliance. The operating unit must ensure that environmental project reviews are conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (Pub. L. No. 91-190; 42 U.S.C. § 4321 *et seq.*, as implemented under 40 CFR chapter V) (NEPA), when the award activities remain subject to Federal authority and control, and all other Federal environmental statutes, regulations and Executive Orders, as listed in the Terms and Conditions to the award. These authorities include the implementing regulations of NEPA, which require the operating units to provide public notice of the availability of project-specific environmental documents, such as environmental impact statements, environmental assessments, findings of no significant impact, and records of decision, as specified in 40 CFR § 1506.6(b).

(b) Civil Rights Compliance. Discrimination by a grant recipient is prohibited in accordance with the following authorities:

(i) Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000d *et seq.*) and the Department's implementing regulations at 15 C.F.R Part 8;

(ii) 42 U.S.C. § 3123 and 42 U.S.C. § 6709 (for EDA recipients), and the Department's implementing regulations at 15 CFR §§ 8.7-8.15;

(iii) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794) and the Department's implementing regulations at 15 CFR Part 8b. For purposes of complying with the accessibility standards set forth in 15 CFR § 8b.18(c), non-federal entities must adhere to the regulations, published by the U.S. Department of Justice, implementing Title II of the Americans with Disabilities Act (ADA) (28 CFR Part 35; 75 FR 56164, as amended by 76 FR 13285) and Title III of the ADA (28 CFR Part 36; 75 FR 56164, as amended by 76 FR 13286). The revised regulations adopted new enforceable accessibility standards called the "2010 ADA Standards for Accessible Design" (2010 Standards), which replace and supersede the former Uniform Federal Accessibility Standards for new construction and alteration projects. *See also Section K.01.a.4. of the DOC Financial Assistance Standard Terms and Conditions (December 26, 2014)* and Chapter 15.C.3. of this Manual;

(iv) The Age Discrimination Act of 1975, as amended (42 U.S.C. § 6101 *et seq.*) and the Department's implementing regulations at 15 CFR Part 20;

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

(vi) Other non-discrimination Federal statutes, regulations, and Executive Orders, as applicable.

(4) Project Management Conference. Shortly after approval of the award, the operating unit may contact the recipient to arrange a project management conference. The purpose of the project management conference is to explain to the recipient its post-approval responsibilities for administration of the award, including its responsibilities with respect to the Terms and Conditions of the award and applicable Federal requirements. Whenever practical, the project management conference should be held where appropriate operating unit regional office personnel will be available. The recipient's authorized representative, architect/engineer, attorney, and possibly the recipient's financial representative should attend.

(5) Architect/Engineer Agreement.

(a) The recipient's architect/engineer agreement shall provide for all services required by the recipient for the design and engineering phases of the project. Appropriate standards, guidance, or forms developed by professional organizations, such as the American Consulting Engineers Council (ACEC), American Society of Civil Engineers (ASCE), National Society of Professional Engineers (NSPE), and/or the American Institute of Architects (AIA) may be used where the recipient does not have standard procurement documents.

(b) The recipient must select the architect/engineer in accordance with the procurement standards set forth in 2 CFR §§ 200.317 (Procurements by states) through 200.326 (Contract provisions). The "cost-plus-percentage-of-cost" and "percentage-of-cost" methods of contracting are specifically prohibited. *See* 2 CFR § 200.323(d).

(c) The architect/engineer agreement shall cover all services necessary for the successful execution of the project, including consultations, surveys, soil investigations, supervision, travel, "as-built" or record drawings, arrow diagram (CPM/PERT) where applicable, and incidental costs. Regardless of who furnishes the construction inspector, the architect/engineer shall be held responsible for making sufficient visits to the project site to determine if the work is proceeding in accordance with the approved plans and specifications.

(d) All architect/engineer contracts awarded by the recipient shall include a provision to the effect that the recipient, the operating unit, the Comptroller General of the United States, the Inspector General of the Department of Commerce (OIG), or any of their duly authorized representatives, shall have access to any paper or electronic documents, books, correspondence, and records of the architect/engineer that are pertinent to the award in order to verify the recipient's compliance with award requirements. *See also* 2 CFR § 200.336, (Contract provisions) for a listing of the required provisions for contracts awarded by recipients pursuant to a DOC financial assistance award (including construction awards).

(6) Early Construction Starts. In order for project costs to be eligible for reimbursement by the operating unit, the operating unit must determine that all contracts necessary for design and construction of the project facilities have been awarded in compliance with the Terms and Conditions of the award. If construction commences prior to the operating unit's determination,

the recipient proceeds at its own risk and at the risk of not being reimbursed by DOC for such activities, unless and until the operating unit's review and concurrence.

(7) Requirements during construction.

(a) At a minimum, during construction, the recipient is responsible for:

(i) Ensuring project completion in accordance with approved plans and specifications;

(ii) Monitoring project progress and reporting progress to the operating unit;

(iii) Providing for required construction permits and adequate construction inspection;

(iv) Promptly paying costs incurred for the project purposes, including appropriate bonding costs and insurance premiums;

(v) Monitoring contractors' compliance with Federal, State, and local requirements; and

(vi) Constructing and maintaining in good condition throughout the construction period, of a sign or signs, at the project site in a conspicuous place indicating that the Federal Government is participating in the project.

(8) Scheduling Inspection for Final Acceptance. The recipient will schedule a final inspection when all construction has been completed, the architect/engineer has conducted a final inspection, and any deficiencies have been corrected. Representatives of the recipient, the architect/engineer, and the contractor(s) will make the final inspection. The operating unit must be given advance notice of the final inspection so that a representative of the operating unit may participate.

(9) Change Orders.

(a) The recipient shall submit all contract change orders for review and for approval by the operating unit even if the operating unit is not participating in any costs associated with the change or if the contract price is to be reduced. Necessary supporting statements, estimates, specifications, and plans should be attached. Absent express legal authority, the operating unit may not approve change orders that change the purpose and intent (the scope) of the project. Change orders that minimally or incidentally increase the cost of the project, but do not change the project scope, may be approved by the operating unit, provided that either:

(i) The recipient has agreed in writing to fund the additional cost, in which case all work to effect the change order will be an ineligible project cost and no federal funds will be used to pay for it; *or*

(ii) There are sufficient funds remaining in the project budget to cover the change order without jeopardizing the completion of the project.

(b) Unit prices are often used as a basis on which to make a contract award. In addition, they may be used for establishing actual costs where actual quantities differ from estimated quantities. Variations will normally require a change order to the contract whether or not a change in unit price is involved. Any increase in quantity that will result in an overall project cost overrun will require a change order to the contract. Any change to a unit price shown in the contract documents will require a change order to the contract. A change order may also be required at project completion to establish final quantities for unit price contracts.

(10) Specific Requirements for Contractors and Subcontractors. The recipient is responsible for ensuring that it includes applicable DOC compliance provisions, as contained in the Terms and Conditions of the award, including the contract provisions required by 2 CFR§ 200.326 (Contract provisions), in all contracts let by the recipient under a DOC construction award. The recipient is also responsible for ensuring that, in turn, each contractor under a DOC construction awards includes the applicable DOC compliance provisions in all subcontracts awarded under the prime contract. Additionally, the recipient must ensure that each contractor and subcontractor agrees to comply with all applicable Federal, state, and local requirements pertaining to the project.

(11) Services Performed by the Recipient's Own Forces.

(a) The recipient may have a portion or all of the design, construction, inspection, legal services, or other work or services in connection with the project performed by personnel who are employed by the recipient either full-time or part-time ("in-house" or "force account" construction). If the recipient elects to use force account labor, the operating unit will furnish specific guidance to the recipient that must be followed for the cost for such work to be eligible for reimbursement from the operating unit.

(b) The operating unit must review and approve the recipient's plan if this method is to be elected by the recipient.

(c) Due to the difficulty in monitoring in-house construction and the limited staff available to Operating Units to perform the monitoring, in-house construction is strongly discouraged. Generally, the in-house method of construction may only be approved if:

(i) The recipient has a special skill required for the construction (e.g., construction of unique Indian structure); *or*

(ii) Substantial cost savings can be demonstrated; *or*

(iii) The Operating Unit Engineer/Construction Manager or Project Officer is satisfied that the recipient has made all reasonable efforts to obtain a contractor, but has failed to do so because of uncontrollable factors (such as the remoteness of the site combined with a small contract or an overabundance of construction work in the project area); *or*

(iv) It has been determined by the Operating Unit that special circumstances require its use to successfully complete the project.

(12) Contracting Standards.

(a) In General.

(i) States. When procuring property and services under a Federal award, a State must follow the same policies and procedures it uses for procurements from its non-Federal funds. A State must comply with 2 CFR § 200.322 (Procurement of recovered materials) and ensure that every purchase order or other contract includes any clauses required by 2 CFR § 200.326 (Contract provisions). *See* 2 CFR § 200.317 (Procurements by states).

(ii) Other Non-Federal Entities. All other non-Federal entities, including subrecipients of a State, must follow 2 CFR §§200.318 (General procurement standards) through 200.326 (Contract provisions), which are outlined below.

(b) General Procurement Standards. The recipient shall adhere to the procurement standards contained in 2 CFR § 200.318 (General procurement standards). In particular, the recipient shall make awards only to responsible contractors that possess the ability to perform successfully under the terms and conditions of a proposed procurement. Additionally, the recipient must maintain a written code of conduct, which shall govern the actions individuals, such as any officer, employee or member of the board of directors or other governing board of the recipient, including any other parties that advise, approve, recommend or otherwise participate in the business decisions of the recipient, such as agents, advisors, consultants, attorneys, accountants or shareholders. This also includes immediate family, significant others, partners, and other persons directly connected to such persons by law or through a business arrangement.

(c) Competition. All procurement transactions must be conducted in a manner providing full and open competition consistent with the standards of 2 CFR § 200.319 (Competition). The non-Federal entity must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. The non-Federal entity must have written procedures for procurement transactions. The non-Federal entity must ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, the non-Federal entity must not preclude potential bidders from qualifying during the solicitation period.

(d) Methods of Procurement. A non-federal entity must adhere to the methods of procurement set forth in 2 CFR § 200.320 (Methods of procurement to be followed). The recipient shall maintain records sufficient to detail the history of each procurement transaction related to the project. These records will include but are not necessarily limited to the rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for determining the contract price. *See* 2 CFR § 200.333 (Retention requirements for records).

(e) Contracting with Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms. As set forth in 2 CFR § 200.321 (Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms), non-federal entities must take all

necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. *See also* the Terms and Conditions of the Award.

(f) Procurement of Recovered Materials. In accordance with 2 CFR § 200.322 (Procurement of recovered materials), a recipient that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (42 U.S.C. § 6962). The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired during the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

(g) Contract Cost and Price. A recipient must adhere to the cost and contract pricing requirements set forth in 2 CFR § 200.323 (Contract cost and price). In particular, a recipient must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold (currently $150,000), including contract modifications.

(h) Bonding Requirements. For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold (currently $150,000), the bonding requirements set forth in 2 CFR § 200.325 (Bonding requirements) shall apply.

(i) Required Contract Provisions. A recipient, including a State, must ensure that contracts and subcontracts awarded pursuant to a DOC financial assistance award contain the applicable provisions described in 2 CFR § 200.326 (Contract provisions) and in Appendix II to Part 200 (Contract Provisions for non-Federal Entity Contracts Under Federal Awards).

(j) Wage rate requirements. For construction projects administered by EDA or as otherwise required by applicable program or appropriation legislation, wage rates paid for labor must not be less than the prevailing area wages, as determined by the U.S. Secretary of Labor and embodied in the construction contract pursuant to the requirements of the Davis-Bacon Act, as amended (40 U.S.C. § 276a *et seq.*).

(13) Review of Plans and Specifications.

(a) Review Prior to Advertising. When required by the operating unit, the recipient must submit plans, specifications, and certain related documents for review and concurrence prior to advertising for bids. This review is to ensure compliance with the Terms and Conditions of the award and does not attest to the accuracy or completeness of design, dimensions, details, proper selection of materials, or compliance with required codes or ordinances, which responsibility rests with the recipient. *See also* 2 CFR § 200.324(a), which specifies that the recipient must provide technical specifications on proposed procurements where the Federal awarding agency believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition.

(b) Review Prior to Award. As provided in 2 CFR § 200.324(b), the operating unit may also review proposed contracts and related procurement documents prior to award if:

(i) The procurement is expected to exceed the simplified acquisition threshold fixed at 41 U.S.C. 403(11) (currently set at $150,000), and is to be awarded without competition or only one bid or offer is received in response to a solicitation;

(ii) The procurement is more than the simplified acquisition threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement;

(iii) The proposed contract modification changes the scope of the contract or increases the contract amount by more than the simplified acquisition threshold;

(iv) The recipient's procurement procedures and operations fail to comply with the procurement standards set out in the award, or

(v) The procurement, which is expected to exceed the simplified acquisition threshold, specifies a "brand name" product.

Until the operating unit has reviewed recipient's proposed contracts and related procurement documents and determined they comply with the Terms and Conditions, the recipient will proceed at its own risk regarding the eligibility of any costs incurred.

(14) Alternate Construction Procurement Methods. If permitted by the terms and conditions of an award, a Recipient may use alternate construction procurement methods to the traditional design/bid/build procedures (including lump sum or unit price-type construction contracts). If an alternate method is used, the recipient shall submit to the operating unit for approval a construction services procurement plan. In this situation, the recipient must secure a design professional to oversee the process.

(15) Protest Procedures. In accordance with 2 CFR § 200.218(k), the recipient is responsible, without recourse to DOC, in accordance with good administrative practice and sound business judgment, for the settlement and satisfaction of all contractual and administrative issues arising out of a recipient's procurement under a DOC financial assistance award. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the non-Federal entity of any contractual responsibilities under its contracts. The Federal awarding agency will not substitute its judgment for that of the non-Federal entity unless the matter is primarily a Federal concern. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction.

F. Disbursement of Grant Funds and Financial Administration

Unless the award provides that payments will be made using the Department of Treasury's Automated Standard Application for Payment (ASAP) system or other automated payment system, after the initial disbursement has been made, the recipient may request interim disbursements by submitting Form SF-270 (Request For Advance Or Reimbursement) or Form SF-271 (Outlay Report And Request For Reimbursement For Construction Programs) as required for reimbursing the operating unit's share of

eligible project costs. When project construction is complete, the final inspection has been completed, and the recipient has accepted the project from the contractor, the recipient can begin the closeout process by submitting the following documentation for review and approval to the respective operating unit:

1. A request for final disbursement on an executed Form SF-270 or SF-271;

2. A certificate of substantial completion, final acceptance report, or similar documentation; and

3. Other documentation as may be required by the operating unit or other Federal authority.

G. Award Amendments

In most instances, proposed modifications must be accomplished only through a formal amendment to the award. Types of amendments may include:

1. Time Schedule (No Cost) Extensions. The recipient is responsible for compliance with the project development time schedule deadlines contained in the Financial Assistance Award. As soon as the recipient becomes aware that it will not be possible to meet the time schedule, it immediately should contact the operating unit to request a time extension. A time extension (no cost) must ordinarily be submitted to the Federal project officer at least 30 days prior to the end date of the award. A budget of the remaining funds should be included in the time extension request. The operating unit may inform the recipient that grant disbursements cannot be made while the recipient is not in compliance with the time schedule. The recipient's notice to the operating unit should contain the following information (as applicable to the subject award):

a. An explanation of the recipient's inability to complete work by the specified date (e.g., a lengthy period of unusual weather delayed the contractor's ability to excavate the site; major re-engineering required in order to obtain Federal or state approvals; unplanned environmental mitigation required).

b. A statement that no other changes to the project are contemplated;

c. A budget for the remaining funds;

d. A statement, supported by documentation where appropriate, demonstrating there is still a bona fide need for the project; and

e. A statement that no further delay is reasonably anticipated and that the project can be completed within the revised time schedule.

2. Budget Revisions and Changes to Program Plans. The recipient shall notify the operating unit and request prior approval of any proposed deviations from budget and program plans in accordance with 2 CFR § 200.308 (Revisions of budgets and program plans) and the Terms and Conditions of the Award.

3. Additional Funding. In accepting an award from an operating unit, the recipient normally agrees to fund any overrun(s). Additional funding for an approved project is subject to prior approval from the Grants Officer. To be considered for approval, additional funding requests must compete with other applications for program funding. If an overrun occurs as a result of the construction contract bid opening, before the operating unit will accept a formal request for additional funds, it will be necessary for the recipient to furnish the following documentation to the operating unit:

a. A written statement from the recipient's architect/engineer giving reasons for the architect/engineer's professional opinion that redesign of the project within the approved scope or using new or additional deductive alternates cannot reasonably be expected to reduce the cost to within the available funds; and

b. A written statement from the administrative head of the recipient's organization justifying why the recipient cannot furnish the additional funds required, why non-Federal sources of funds cannot be secured, and, for EDA projects, certifying that the recipient's effective taxing and/or borrowing capacity have or has been exhausted.

The operating unit's acceptance of a request for additional funding does not indicate approval. Any further action by the recipient pending the operating unit's review of the request is at the recipient's risk and at the risk of not being reimbursed by DOC, unless and until the request is approved by the Grants Officer.

4. Enforcement and Termination.

a. Enforcement.

(1) If a recipient materially fails to comply with any Term or Condition of the award, whether stated in a Federal statute, regulation, assurance, application for Federal financial assistance, or notice of award, the operating unit may pursue all available rights and remedies available to it, including those set out in 2 CFR § 200.338 (Remedies for noncompliance).

(2) Costs resulting from obligations incurred by the recipient after notice by the operating unit of suspension or termination of the award are not allowable unless the operating unit expressly authorizes them in the notice of suspension or intent to terminate, or subsequently. Other costs incurred by the recipient during suspension or after termination that are necessary and not reasonably avoidable are allowable if:

(a) The costs result from obligations that were properly incurred by the recipient before the effective date of the suspension or termination, are not in anticipation of it, and in the case of termination, are non-cancellable; and

(b) The costs would be allowable if the award was not suspended or expired normally at the end of the funding period in which the termination takes effect.

(3) The remedies for noncompliance identified in 2 CFR § 200.338 (Remedies for noncompliance), including suspension and termination, do not preclude the recipient from being

subject to debarment and suspension under Executive Orders 12549 and 12689 and the Department of Commerce's implementing regulations at 2 CFR Part 1326 (Non-Procurement Debarment and Suspension).

b. Termination.

(1) Terminations for a non-federal entity's material failure to comply with the terms of the award must be in accordance with 2 CFR §§ 200.339 (Termination), 200.340(b) and (c) and 200.341 (Opportunities to object, hearings and appeals), as applicable.

(2) Terminations with the consent of the non-Federal entity (also known as terminations by mutual agreement) must comply with 2 CFR § 200.339 (Termination).

Note that "termination for cause" as articulated at 2 CFR § 200.339(a)(2) is a new concept in the Uniform Guidance. In accordance with guidance provided by OMB, an agency's authority to terminate for cause is relatively circumscribed. OMB explains as follows in the preamble to the Uniform Guidance:

Commenters suggested that language should be added to allow for Federal agency termination for cause, because situations often arise beyond the Federal agency's or non-Federal entity's control which may require awards to be terminated. This language would prove useful in situations like those encountered during implementation of the Recovery Act or Sequestration, where congressional mandates encouraged expedited performance, or changes to appropriated amounts require modifications to programs. *See* 78 Fed. Reg. 78589, 78599 (Dec. 26, 2013).

Based on the above OMB guidance, a Federal awarding agency should only terminate for cause when required by a circumstance beyond the agency's control, such as a Congressional mandate. Because termination for cause as used in the Uniform Guidance is a new concept, operating units and Grants Officer should contact FALD as soon as possible when termination for cause under 2 CFR § 200.339(a)(2) is being considered.

H. Post-Construction Requirements

1. Audit Requirements.

a. Certain recipients are subject to the audit requirements contained in Subpart F of 2 CFR Part 200 (Audit Requirements) – referred to in this Grants Manual as the Single Audit Requirements. The Single Audit Requirements are issued pursuant to the Single Audit Act of 1984 (Pub. L. No. 98-502), as amended by the Single Audit Act Amendments of 1996 (Pub. L. No. 104-156; 31 U.S.C. §§ 7501-7507) and require that recipients that are nonprofit organizations, government agencies, Indian tribes, and educational institutions expending Federal awards of $750,000 or more during the recipient's fiscal year conduct an audit in accordance with the requirements of Subpart F of 2 CFR Part 200. If the recipient does not have a current audit performed in accordance with the Single Audit Requirements, the operating unit shall advise the recipient of the need for submitting the required audit and may also take appropriate enforcement action in accordance with 2 CFR § 200.338 (Remedies for noncompliance).

b. For profit and other organizations not subject to the Single Audit Requirements shall be subject to the audit requirements set forth in Section F.01.b. of the DOC Financial Assistance Standard Terms and Conditions (December 2014), unless a different audit requirement is imposed through special award condition(s).

c. The operating unit or the OIG may conduct audits of awards. The recipient will be notified in advance if it is selected for an audit. The recipient must permit the operating unit, the Comptroller General of the United States, the OIG, or any of their duly authorized representatives, access to any paper or electronic documents, books, correspondence, and any records (that are pertinent to a specific award to verify the recipient's compliance with the Terms and Conditions of an award. *See* 2 CFR § 200.336 (Access to records).

2. Property Management.

a. Section E.2.a(2)(a) of this chapter provides that all DOC construction awards include a term requiring that the recipient to agree that, for the estimated useful life of the facility funded with the award, the project will be properly and efficiently administered, operated and maintained, for the purpose authorized by the award and in accordance with the Terms and Conditions of the award.

b. Estimated Useful Life. Unless the operating unit determines otherwise, the following ranges of estimated useful lives are considered reasonable for the listed assets:

(1) New buildings, 20 – 40 years.

(2) Rehabilitation or outfitting of existing buildings, 15 – 20 years.

(3) Improvements other than buildings, 15 – 20 years.

The estimated useful life should be determined from the date of acquisition, date of certificate of occupancy for building or improvement, filing of the notice of federal interest, or other appropriate date as provided in the terms and conditions of an award FALD should be consulted to the extent that a Grants Officer or Operating Unit has questions concerning the date upon which the estimated useful life in a specific project or asset should commence.

c. Notice of Federal Interest. Section E.2.a.(2)(b) of this chapter provides that certain DOC construction awards include a term requiring the recipient to file or record a covenant, mortgage, or other statement of the operating unit's interest in the property (the "Federal Interest"), acceptable in form and substance to the operating unit, that must be placed of record in accordance with local law, with continuances re-filed as appropriate (for fixture filings). The Federal Interest notice provides public notice of that interest and helps to ensure compliance with matters such as the purpose, scope, and use of a project; it should be reflected by a recorded notice in appropriate form and substance (e.g., a mortgage, covenant, or other statement) setting forth the operating unit's interest in real property or other improvements in the case of a project involving the acquisition, construction, or improvement of real property and/or buildings, signed by an authorized official of the recipient. It should specify the estimated useful life of the property and should include but not be limited to the use requirements applicable to the property and the procedure for disposition of

the property when it is no longer needed for the originally-authorized purpose. The notice of the DOC operating unit's interest must be recorded or filed in the real property records of the jurisdiction in which the real property is located, in accordance with applicable law. In view of the complexities and varying requirements for perfecting interests in real property from jurisdiction to jurisdiction, the DOC requires a written statement from a licensed attorney in the jurisdiction where the property is located, certifying that the Federal Interest has been protected as required under the award and in accordance with this general policy. A copy of the recorded lien, statement, or other recordable instrument must be attached to the attorney's certification.

When the recipient's executed certification and attached documentation is received by the operating unit, the operating may want to consider consulting with other legal counsel within the DOC (for example, FALD or EDA's Office of Chief Counsel) who have experience in dealing with real property construction grants, for assurance that the certification and attached documentation reasonably appear to adequately protect the Federal Interest.

d. Type of Federal Interest. Operating units should consider the nature of the recipient and the asset and the potential risk of loss to the government when determining the type of instrument that the recipient should be required to execute and record reflecting the Federal Interest therein. State or local law may prescribe the form, means and location of filing or recording an appropriate notice. Operating units are encouraged to consult with FALD counsel concerning the form and content of recipient documentation and public filings.

3. Closeout Procedures.

a. After construction is complete and the project is closed out financially, the recipient has an ongoing responsibility to properly operate and maintain the project for its estimated useful life in accordance with its original purpose. The recipient also must comply with all applicable requirements including but not limited to ongoing compliance with Federal statutes, regulations, and Executive Orders prohibiting discrimination; applicable Federal laws prohibiting inherently religious activity; applicable environmental law and performance measures; and maintaining records to document such compliance which shall be made available for inspection by the operating unit or other government officials as required. When project construction and final inspection have been completed, and the recipient has accepted the project from the contractor, the recipient may begin the closeout process in accordance with 2 CFR § 200.343 (Closeout) and the Terms and Conditions of the Award. The recipient should furnish the following to the operating unit:

(1) Confirmation of compliance with all Terms and Conditions of the Award, including all Special Award Conditions;

(2) All required financial and progress reports;

(3) A properly completed Form SF-429, including applicable attachments and supporting documentation;

(4) Confirmation of appropriate insurance coverage for aboveground facilities in accordance with 2 CFR § 200.310 (Insurance coverage) and the Terms and Conditions of the Award;

(5) Confirmation that all changes to the project have been brought to the attention of the operating unit and approved as necessary by the Grants Officer;

(6) Confirmation that provisions have been made for the retention of records pertaining to the award in accordance with the 2 CFR § 200.333 (Retention requirements for records) and the Terms and Conditions of the Award;

(7) A copy of the executed Certificate of Final Completion, Certificate of Occupancy, or similar documentation;

(8) Confirmation that as-built drawings have been received from the contractor or the architect/engineer;

(9) Confirmation that a copy of the recipient's currently valid audit under the Single Audit Requirements has been submitted to the Federal Audit Clearinghouse and, if required, furnished to the operating unit. If an audit under the Single Audit Requirements is required, but not available, the recipient must submit a plan to secure the required audit to the operating unit. The recipient must advise the operating unit if an audit under the Single Audit Requirements is not required. If the recipient is not subject to the Single Audit Requirements, the operating unit must confirm the recipient has submitted all required project-specific audits;

(10) Confirmation that no Davis-Bacon (if applicable) or local labor employment violations exist;

(11) Notification of any change, lien, mortgage, or other encumbrance relating to the ownership of the project;

(12) Notification of any unresolved contract/contractor disputes;

(13) Execution and recordation of a lien, mortgage, or covenant of purpose, use, and ownership in favor of the operating unit, if this is required under the Terms and Conditions of the award and has not already been accomplished; and

(14) Confirmation that the recipient will maintain project facilities for the estimated useful life of the facility as determined by the operating unit, during which period the recipient may not alienate its ownership or change the use and purpose of the assisted facility without prior written approval of the Grants Officer;

b. Within 90 calendar days of project completion (which may be extended by the Grants Officer upon written request by the recipient), the recipient shall submit all financial, performance, and other reports as required by 2 CFR § 200.343 (Closeout) and by the Terms and Conditions of the Award.

c. Unless the operating unit authorizes an extension, the recipient shall liquidate all obligations incurred under the award no later than 90 calendar days after the acceptance of the project from

the contractor or before the end of the funding period, whichever occurs earlier, as specified in 2 CFR § 200.343 (Closeout) and in the Terms and Conditions of the Award.

d. At the Grants Officer discretion, the following documentation should accompany the recipient's final disbursement request when submitted to the operating unit, unless such documentation has been previously furnished, as applicable:

(1) Copies of all executed contracts, subcontracts (if claimed separate from the prime contract), contract change orders, vouchers, canceled checks, and other evidence of costs incurred necessary to substantiate the costs claimed on the operating unit award;

(2) A copy of the recipient's currently valid audit performed in accordance with the Single Audit Requirements, if such an audit is required, and if the operating unit requires submission of the audit;

(3) Payroll forms, if any of the cost claimed is for work performed by the recipient's in-house work forces ("force account");

(4) Title opinions, legal descriptions, bills of sale, title records, etc., for any land cost being claimed; and

(5) Specifics of any administrative costs being claimed.

e. In accordance with 2 CFR § 200.344 (Post-closeout adjustments and continuing responsibilities), the closeout of an award does not affect any of the following:

(1) The right of the operating unit to disallow costs and recover funds on the basis of a later audit or other project review;

(2) The obligation of the recipient to return any funds due as a result of later corrections or other transactions;

(3) Property management, property disposition, and records retention requirements; and

(4) Audit requirements set forth in 2 CFR Part 200, Subpart F, and in the Terms and Conditions of the Award.

Appendix A: Applicable Regulations, OMB Circulars and Agency-specific Guidance

The following regulations, OMB Circulars, and forms are available from public libraries and may also be accessed at the following internet websites:

- OMB (www.whitehouse.gov/omb/), or
- The Government Printing Office Access site of the National Archives and Records Administration (www.gpoaccess.gov/cfr/index.html).

See also DOC ST&Cs and Chapter 2 of this manual for discussion of additional requirements, including, but not limited to:

- National Environmental Policy Act of 1969, as amended (Pub. L. No. 91-190; 42 U.S.C. § 4321 et seq., as implemented under 40 CFR Chapter V) (NEPA);
- Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000d et seq.) and the Department's implementing regulations at 15 C.F.R Part 8;
- 42 U.S.C. § 3123 and 42 U.S.C. § 6709 (for EDA recipients), and the Department's implementing regulations at 15 CFR §§ 8.7-8.15;
- Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794) and the Department's implementing regulations at 15 CFR Part 8b;
- The Age Discrimination Act of 1975, as amended (42 U.S.C. § 6101 et seq.) and the Department's implementing regulations at 15 CFR Part 20;
- The Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.) prohibiting discrimination on the basis of disability under programs, activities, and services provided or made available by State and local governments or instrumentalities or agencies thereto, as well as public or private entities that provide public transportation;
- 2 CFR Part 1326 (Non-Procurement Debarment and Suspension);
- 15 CFR Part 11 (Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs);
- 2 CFR Part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, including the "Property Standards" set forth in 2 CFR §§ 200.310 (Insurance coverage) – 200.316 (Property trust relationship));
- 36 CFR Part 800 (Protection of Historic Properties);
- 48 CFR Part 31 (Contract Cost Principles and Procedures);
- OMB Standard Form 424C (Budget Information – Construction Programs);
- OMB Standard Form 424D (Assurances – Construction Programs) which references laws and regulations that may apply to particular awards;
- OMB Standard Form SF 428 (Tangible Personal Property Report) including Attachments A through C;
- OMB Standard Form SF 429 (Real Property Status Report) including Attachments A through C; and
- Davis Bacon Wage Rates, available at http://www.wdol.gov/.

1. The following is available from EDA:

- Public Works and Economic Development Act of 1965, as amended (42 U.S.C. § 3121 et seq.) (PWEDA)
- EDA regulations set forth at 13 CFR Parts 300 through 315
- EDA Standard Terms and Conditions for Construction project
- The Summary of EDA Construction Standards (with Exhibits)

2. The following are available from NOAA.

   - NOAA(Construction) Grants Policy Directive
   - NOAA Grants Standard Operating Procedures – Construction Grants

3. The following are included as exhibits to this chapter below:

   (a) Exhibit A – Sample Mortgage Cover Letter
   (b) Exhibit B – Sample Mortgage
   (c) Exhibit C – Sample Covenant Cover Letter
   (d) Exhibit D – Sample Covenant

Exhibit A: Sample Mortgage Cover Letter

[Address of Recipient's Representative]

Re: Award No. XXXXXXXXXX— [Project Title]

Dear _____:

Please refer to Special Award Condition (SAC) No. ____, which is a term of the above- referenced Financial Assistance Award between the [operating unit] and the [recipient]. This term requires the recipient to execute, as directed by the Grants Officer or terms of the award, a mortgage, covenant or other statement of [operating unit's] interest in real property acquired or improved under the Award, acceptable in form and substance to [operating unit], which statement must be perfected and placed of record in accordance with local law, with continuances re-filed as appropriate.

Property that is acquired or improved, in whole or in part, with Federal assistance is held in trust by the recipient for the benefit of the project for the estimated useful life of the project, during which period the [operating unit] retains an undivided equitable reversionary interest in the property (the Federal Interest). The recipient may not dispose of, modify the use of, or change the terms of the real property title, or other interest in the project site and facilities without permission and instructions from [operating unit]. The Federal Interest secures compliance with matters such as the purpose, scope and use of a project. Where Federal assistance is used in the construction of [Insert construction purpose], such as the recipient's [Project Title], [operating unit] requires that the Federal Interest be protected through the execution of a first priority mortgage on the facility.

I am enclosing an "Agreement and Mortgage" document that will satisfy the requirements of the above-mentioned SAC after the real property description has been attached, and the instrument properly executed and recorded. Please forward the "Agreement and Mortgage" document to your counsel, requesting the following actions:

(1) Prepare property description of the land where the above project facility is being constructed, mark as Exhibit "A" and attach to the document;
(2) Approve the instrument in the place indicated thereon;
(3) See that the instrument is properly executed, recorded, and acknowledged; and
(4) Return a copy of the instrument to me being certain that the recording data is reflected thereon, along with a title opinion showing that [operating unit] holds a first priority lien position on the property encumbered by the mortgage.

Compliance with SAC _____ by the recipient is required prior to the disbursement of funds under this award. Please have your attorney contact _____, at _____should there be any questions. _____ may also be reached at the following e-mail address: _____.

Sincerely,

Grants Officer

Enclosures

Exhibit B: Sample Mortgage

AGREEMENT AND MORTGAGE

WHEREAS, the [_____] (hereinafter called Mortgagor) has applied to, received, and accepted from the United States Department of Commerce, [operating unit] (hereinafter _____) [include agency addresses as necessary and appropriate] a grant under the [_____Act _____] in the amount of [$_____] Dollars ([operating unit] Grant Amount) pursuant to a Financial Assistance Award dated [_____], and bearing [operating unit] Award No. [_____] (Award);

WHEREAS, pursuant to the application submitted by Mortgagor requesting said Award, which includes all forms, documentation, and any information submitted to [operating unit] as part and in furtherance of the request for the Award, including any information submitted after the initial application (Grant Application) and pursuant to the Award, the Grant Amount is to be used for the purpose of acquiring or making improvements to the real property described in Exhibit A, attached hereto and made a part hereof (Project Property), consisting of
[_____
_____] (Project);

WHEREAS, [_____] years from the [trigger date (e.g., date of award, construction end date, etc.)] is the Estimated Useful Life of the improvements made to the Project Property pursuant to the Project;
WHEREAS, under government-wide regulations set out at 2 CFR part 200 and [operating unit]'s regulations governing the Award at [applicable regulation(s) governing award], any transfer or conveyance of Project Property or any portion thereof must have the prior written approval of [operating unit];

WHEREAS, in accordance with [Act under which grant is made], [operating unit] is not authorized to permit transfer or conveyance of Project Property to parties that are not eligible to receive [operating unit] grants unless [operating unit] is repaid the Federal Share as defined at 2 CFR part 200 ("Federal Share") or unless the authorized purpose of the Award is to develop land in order to lease or sell it for a specific use, in which case [operating unit] may authorize a lease or sale of the Project Property or a portion thereof if certain conditions are met;

WHEREAS, the aforesaid Award from [operating unit] provides the purposes for which the Grant Amount may be used and provides, inter alia, that Mortgagor will not sell, lease, mortgage, or otherwise use or alienate any right to, or interest in the Project Property, or use the Project Property for purposes other than or different from those purposes set forth in the Award and the Grant Application made by Mortgagor therefor, such alienation or use being prohibited by [applicable regulation(s) governing award] and 2 CFR part 200; and

WHEREAS, Mortgagor and [operating unit] desire to establish an obligation for and first priority lien [or other priority position, as approved by [operating unit]] on Project Property in favor of [operating unit] in the event that the Project Property is used, transferred, or alienated in violation of the Award, [applicable regulation(s) governing award], or 2 CFR part 200;

NOW THEREFORE, Mortgagor does hereby grant and convey unto [operating unit], its successors and assigns, a mortgage and a lien on said Project Property to secure Mortgagor's obligation (i) to faithfully

comply with the terms and conditions of the Award and the regulations set forth in [applicable regulation(s) governing award] and 2 CFR part 200, and (ii) to use Project Property only for the purposes set forth therein for the Estimated Useful Life of Project Property. Mortgagor agrees that a debt, with interest thereon at the rate set forth in 31 U.S.C. § 3717, in the amount of the Grant Amount, the amount actually disbursed under the Award, or the amount of the Federal Interest in Project Property determined pursuant to 2 CFR part 200 ("Federal Share"), as that provision may be amended from time to time (Indebtedness), which amount shall be determined at the sole discretion of [operating unit] in accordance with its authorities and regulations, shall be due and payable by Mortgagor to [operating unit] upon the termination of the Award, or any attempt to use, transfer, or alienate any interest in Project Property in violation of the Award or of the regulations set forth in [applicable regulation(s) governing award] or 2 CFR part 200 and does, moreover, agree that such Indebtedness shall be extinguished only through the full payment thereof to the United States.

Mortgagor further covenants and agrees as follows:

1. Lease of Project Property:

If the Grant Application provides for and the Award authorizes Mortgagor to lease Project Property, each lease arrangement shall be subject to the prior written approval of [operating unit]. [operating unit] must determine that the applicable lease arrangement is consistent with the Grant Application and authorized general and special purpose(s) of the Award; will provide adequate employment and economic benefits for the area in which Project Property is located; is consistent with [operating unit] policies concerning, but not limited to, non-discrimination, non-relocation, and environmental requirements; and that the proposed lessee is providing adequate compensation, as defined in [applicable regulation(s) governing award], to Mortgagor for said lease. Any lease agreement entered into by Mortgagor of the Project Property shall be subordinate, junior, and inferior to this Agreement and Mortgage, and, at [operating unit]'s request, be expressly subordinated in writing and the written subordination recorded in the same manner as this Agreement and Mortgage [Note that if a Recipient objects to this provision because there's no record notice of the lease, the last sentence of this provision can be modified.]

2. Charges; Liens:

Mortgagor shall protect the title and possession of all Project Property; pay when due all taxes, assessments, mechanic and/or materialmen liens, and other charges, fines, and impositions now existing or hereafter levied or assessed upon Project Property; and preserve and maintain the priority of the lien hereby created on Project Property, including any improvements hereafter made a part of the realty.

3. Hazard Insurance:

Mortgagor shall insure and keep insured all improvements now or hereafter created upon Project Property against loss or damage by fire and windstorm and any other hazard or hazards included within the term "extended coverage." The amount of insurance shall be the full insurable value of said improvements but in no event less that the full replacement value of the improvements. Any insurance proceeds received by Mortgagor due to loss shall be applied to restoration or repair of any damaged

Project Property, provided such restoration or repair is economically feasible and the security of this Agreement and Mortgage is not thereby impaired. If such restoration or repair is not economically feasible or if the security of this Agreement and Mortgage would be impaired, Mortgagor shall use said insurance proceeds to compensate [operating unit] for its Federal Interest. [operating unit]'s Federal Interest shall be satisfied when amount received is equal to the Federal Share as that term is defined at 2 CFR part 200 ("Federal Share").

4. Preservation and Maintenance of the Project Property:

Mortgagor shall keep Project Property in good condition and repair during the Estimated Useful Life and shall not permit or commit any waste, impairment, or deterioration of Project Property, but shall give notice written thereof to [operating unit] without delay.

5. Inspection:

[operating unit] may make or cause to be made reasonable entries upon and inspection of Project Property by [operating unit] or an authorized representative of [operating unit].

6. Condemnation:

The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of Project Property, or any part thereof, or for any conveyance in lieu of condemnation shall be used by Mortgagor to compensate [operating unit] for [operating unit]'s Federal Share. [operating unit]'s Federal Share of said condemnation proceeds shall be equal to that percentage which the Grant Amount bore to the total project costs under the Award for which the condemned property was acquired or improved. See also 2 CFR part 200 (Federal Share).

7. Recording of Agreement and Mortgage – Mortgagor's Copy:

Mortgagor shall record this Agreement and Mortgage in accordance with the laws and rules of the County where Project Property is located, and shall ensure that the lien hereby granted is a first and prior lien on Project Property senior to all other interests save those which may arise by operation of law [or other priority position as approved by [operating unit]]. [operating unit] shall be furnished with the original, recorded Agreement and Mortgage as executed.

8. Notice:

Any notice from [operating unit] to Mortgagor provided for in this Agreement and Mortgage shall be sent by certified mail to Mortgagor's last known address or at such address as Mortgagor may designate to [operating unit], except for any notice given to Mortgagor in the manner as may be prescribed by applicable law as provided hereafter in this Mortgage. Likewise, any notice from Mortgagor to [operating unit] shall be sent by certified mail to [operating unit]'s address.

9. Remedies:

Upon Mortgagor's breach of any term or condition of the Award or any provision of this Agreement and Mortgage, then [operating unit], its designees, successors, or assigns may declare the Indebtedness immediately due and payable, and may enforce any and all remedies available including but not limited to foreclosure by an action brought either in a United States District Court or in any State Court having jurisdiction, but such action shall not be deemed to be a release or waiver of any other right or remedy to recover repayment thereof.

After any breach on the part of Mortgagor, [operating unit] shall, upon bill filed or the proper legal proceedings being commenced for the foreclosure of this Agreement and Mortgage, be entitled, as a matter of right, to the appointment by any competent court, without notice to any party, of a receiver of the rents, issues, and profits of Project Property, with power to lease and control such Property, and with such other powers as may be deemed necessary.

10. Remedies Cumulative:

All remedies provided in this Agreement and Mortgage are distinct and cumulative to any other right or remedy under this Agreement and Mortgage, the Award, or related documents, or afforded by law or equity, and may be exercised concurrently, independently or successively.

11. Forbearance Not a Waiver:

Any forbearance by [operating unit] in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any right or remedy. The procurement of insurance or the payment of taxes or other liens or charges by [operating unit] shall not be a waiver of [operating unit]'s right under this Agreement and Mortgage.

12. Release:

[operating unit] and the Mortgagor agree that, so long as the possession and use of Project Property by Mortgagor has been only for the purposes set forth in the Award and Grant Application, then after the Estimated Useful Life of the improvements to Project Property, Mortgagor may request a release of the Federal Interest in accordance with [applicable regulation(s) governing award], which will not be withheld except for good cause, as determined in [operating unit]'s sole discretion; provided, however, that in accordance with [applicable regulation(s) governing award], restrictions upon the religious use or discriminatory practices in connection with the use of Project Property shall survive this Agreement and Mortgage and any release thereof, which shall be evidenced by a separate recorded covenant.

13. Governing Law; Severability:

This Agreement and Mortgage shall be governed by applicable federal law and nothing contained herein shall be construed to limit the rights the [operating unit], its designees, successors, or assigns are entitled to under applicable federal law. In the event that any provision or clause of this instrument conflicts with applicable law, such conflict shall not affect other provisions of this instrument which can be given effect without the conflicting provision, and to this end the provisions of this instrument are declared to be severable.

[Optional: 14. If [operating unit] approves and enters into an Intercreditor Agreement with one or more Creditor under which [operating unit] shares a first priority lien position with said creditors, a default in the shared mortgage shall constitute a default under this Agreement and Mortgage.]

IN WITNESS WHEREOF, Mortgagor has hereunto set its hand and seal on this the ___ day of _____, 20__.

ATTEST:	Mortgagor
By: _____	By: _____
Title: _____	Its: _____
Approved: _____	
Attorney for Mortgagor	

[Optional:

"This approval by Mortgagor's counsel shall be in addition to and in no way a restriction or limitation of said Attorney's separate written legal opinion regarding this Agreement and Mortgage.]

Exhibit C: Sample Covenant Cover Letter

[Address of Recipient's Representative]

Re: Award No. XXXXXXXXXX— [Project Title]

Dear _____:

Please refer to Special Award Condition (SAC) No. ____, which is a term of the above- referenced Financial Assistance Award between the [operating unit] and the [recipient]. This term requires the recipient to execute, as directed by the Grants Officer or terms of the award, a mortgage, covenant or other statement of [operating unit's] interest in real property acquired or improved under the Award, acceptable in form and substance to [operating unit], which statement must be perfected and placed of record in accordance with local law, with continuances re-filed as appropriate.

Property that is acquired or improved, in whole or in part, with Federal assistance is held in trust by the recipient for the benefit of the project for the estimated useful life of the project, during which period the [operating unit] retains an undivided equitable reversionary interest in the property (the Federal Interest). The recipient may not dispose of, modify the use of, or change the terms of the real property title, or other interest in the project site and facilities without permission and instructions from [operating unit]. The Federal Interest secures compliance with matters such as the purpose, scope and use of a project. Where Federal assistance is used in the construction of [Insert construction purpose], such as the recipient's [Project Title], [operating unit] requires that the Federal Interest be protected through the execution of a covenant of purpose, use, and ownership.

I am enclosing an "Agreement and Mortgage" document that will satisfy the requirements of the above-mentioned SAC after the real property description has been attached, and the instrument properly executed and recorded. Please forward the "Agreement and Mortgage" document to your counsel, requesting the following actions:

(1) Prepare property description of the land where the above project facility is being constructed, mark as Exhibit "A" and attach to the document;
(2) Approve the instrument in the place indicated thereon;
(3) See that the instrument is properly executed, recorded, and acknowledged; and
(4) Return a copy of the instrument to me being certain that the recording data is reflected thereon, along with a title opinion showing that [operating unit] holds a first priority lien position on the property encumbered by the mortgage.

Compliance with SAC _____ by the recipient is required prior to the disbursement of funds under this award. Please have your attorney contact _____, at _____should there be any questions. _____ may also be reached at the following e-mail address: _____.

Sincerely,

Grants Officer

Enclosures

Exhibit D: Sample Covenant

COVENANT OF PURPOSE, USE AND OWNERSHIP

THIS COVENANT OF PURPOSE, USE AND OWNERSHIP dated this _____ day of _____, 200__, by and between _____ _____ _ whose address is _____ _____ (hereinafter with its successors and assigns called Recipient); and the [operating unit] acting on behalf of the UNITED STATES OF AMERICA, whose address is _____ _____ (hereinafter with successors and assigns called _____):

WHEREAS, Recipient submitted an application, designated as [operating unit] Award No._____, for financial assistance pursuant to _____ (hereinafter _____ or the Act); and

WHEREAS, by Award, dated _____, [operating unit] offered to Recipient a financial assistance award in the amount of $_____ (hereinafter called Award Amount) for the purposes as stated in the Award Agreement, which, without limitation of the terms and conditions thereof, may be described as _____ _____ (hereinafter called Project); and

WHEREAS, on _____, Recipient accepted the Offer of Award (hereinafter called Award Agreement) subject to the terms and conditions 2 CFR Part 200 [add any programmatic authority]; and

WHEREAS, said Project included acquisition of and/or specifically improving the real property described in Exhibit "A" attached hereto and incorporated herein (hereinafter, with all improvements thereto, called the Property); and

WHEREAS, the terms and conditions of the Award Agreement, including applicable regulations at 2 CFR Part 200, prescribe Recipient's relation to the Property acquired and/or improved with funds from the Award, as well as the uses and disposition of the Property under the Award; and

WHEREAS, Recipient as owner of all or part of the real property described in Exhibit "A", attached hereto, agreed to record this Covenant in the appropriate office for the recording of public records affecting real property so as to constitute notice to all persons of the Federal Interest in the Property and of restrictions on title to and use of the Project and all or part of the real property described in Exhibit "A", attached hereto; and

WHEREAS, the _____ located at _____ is the proper office to record this covenant;

NOW THEREFORE, in consideration of financial assistance rendered and/or to be rendered by [operating unit] and of other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, and to assure that the benefits of the Project will accrue to the public and be used as intended by both [operating unit] and Recipient, Recipient hereby covenants and agrees as follows:

1. The estimated useful life of the project is _____ years as determined by or measured from _____.

2. During the estimated useful life, Recipient holds legal title to the Property in trust for, and shall use the Property only for those uses consistent with, Project purposes as set forth under the Award Agreement.

3. The Recipient shall not sell, transfer, convey, mortgage or otherwise encumber any interest in the Property without the prior written approval of the Grants Officer and [operating unit], or their designees or successors.

4. Any use of the Property for purposes other than authorized Project purposes shall first likewise require the written approval of the Grants Officer and [operating unit], or their designees or successors.

5. Upon Recipient's failure to comply with paragraphs 2, 3 and/or 4 hereinabove, or as a condition to approval under paragraphs 3 or 4 hereinabove, the Grants Officer and [operating unit], or their designees or successors may require and direct the payment to the [operating unit] or the United States of the Federal share for the Federal interest in the Property as provided in 2 CFR Part 200.

6. This Covenant shall be fully executed and recorded prior to the first request for disbursement or first withdrawal of the Award Amount by the Recipient, and is prima facie evidence of the receipt of federal funds in the acquisition and/or improvement of the Property for the Project purposes under the Award Agreement.

7. It is stipulated and agreed that the terms hereof constitute a reasonable restraint on alienation of use, control, and possession of or title to the Property given the Federal Interest expressed herein.

8. In any conflict between the terms of this Covenant and of the Award Agreement, the Award Agreement shall control.

9. This covenant shall run with the land.

IN WITNESS WHEREOF, the recipient has hereunto set their hand as of the day and year first above written by their duly authorized officer. A completed duly recorded copy of this Covenant shall be forwarded to [operating unit]. (The appropriate acknowledgment must be included for recording in Recipient's jurisdiction.)

THIS COVENANT OF PURPOSE, USE AND OWNERSHIP dated this
_____ day of _____, 200__, by and between_____
_____

_____
whose address is_____
_____
(hereinafter with its successors and assigns called Recipient); and the [operating unit], UNITED STATES OF AMERICA, whose address is _____
_____
(hereinafter with successors and assigns called _____):

RECITALS:

WHEREAS, Recipient submitted an application, designated as [operating unit] Award No._____, for financial assistance pursuant to _____ _____(hereinafter the Act); and

WHEREAS, by offer of Award, dated _____, [operating unit] Offered to Recipient a financial assistance award in the amount of $_____ (hereinafter called Award Amount) to assist in financing
_____
_____
(hereinafter called Project); and

WHEREAS, said Project included acquisition of and/or specifically improving the real property described in Exhibit "A" attached hereto and incorporated herein (hereinafter with all improvements called Property); and

WHEREAS, on _____, Recipient accepted the Offer Of Award (hereinafter called Award Agreement) subject to terms and conditions, pursuant to which Recipient covenanted and agreed to comply with the applicable requirements of 15 CFR Parts 14 or 24 and 2 CFR Part 200, as applicable [add any programmatic authority]; and

WHEREAS, the Award Agreement provides the purposes for which the Award Amount may be used and provides, inter alia, that Recipient will not sell, lease, mortgage, or otherwise alienate any right to or interest in the Property, or use the Property for purposes other than, and different from, those purposes set forth in the Award Agreement and the application made by Recipient therefore (hereinafter called Project Purposes), such alienation and use being prohibited by 15 Parts 14 or 24 and 2 CFR Part 200, as applicable; and

WHEREAS, under the authority of the Act, [operating unit] is not authorized to permit Recipient to use the property for purposes other than Project Purposes or to lease, transfer, convey, mortgage or hypothecate the Project to any party without prior approval from [operating unit], unless [operating unit] is repaid its share of the market value of the Project, as set forth below;

WHEREAS, Recipient as owner of all or part of the real property described in Exhibit "A", attached hereto, agreed to record this Covenant in the appropriate office for the recording of public records affecting real property so as to constitute notice to all persons of any and all restrictions on title

to and use of the Project and all or part of the real property described in Exhibit "A", attached hereto; and

WHEREAS, the _____
located at _____
is the proper office to record this covenant;

NOW THEREFORE, in consideration of financial assistance rendered and/or to be rendered by [operating unit] and of other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, and to assure that the benefits of the Project will accrue to the public and be used as intended by both [operating unit] and Recipient, Recipient hereby covenants and agrees as follows:

1. The estimated useful life of the project is _____years as determined by _____.

2. Recipient agrees that for the estimated useful life set forth above, Recipient will not sell, transfer, convey, or mortgage any interest in the real property acquired or improved in whole or in part with funds made available through this Award, nor shall Recipient use the Property for purposes other than the Project Purposes without the prior written approval of the Grants Officer, [operating unit], or his/her designee or successor. Such approval may be withheld until such time as Recipient first pays to [operating unit] the Federal share of the Property as provided in 15 CFR Parts 14 or 24, as applicable. The Federal share of the value of the Property is that percentage of the current fair market value of the Property attributable to the [operating unit's] participation in the Project (after deducting actual and reasonable selling and fix-up expenses, if any, incurred to put the property into condition for sale). The Federal share excludes that value of the Property attributable to acquisition or improvements before or after [operating unit's] participation in the Project and not included in Project costs.

3. Recipient further covenants that in the event the Property is used for purposes other than Project Purposes, or is sold, leased, transferred, conveyed, or mortgaged without the prior written approval of the Grants Officer, Recipient will compensate the Federal Government for the Federal share of the Property as described above and in 15 CFR Parts 14 or 24, and as applicable 2 CFR Part 200.

4. Recipient further agrees that, as a prerequisite to accepting the disbursement of any Award funds by [operating unit], Recipient shall execute and place on record against the Property acquired or improved in whole or in part with the funds made available through this Award, this Covenant of Purpose, Use and Ownership. Recipient further agrees that whenever the property is sold, leased, or otherwise conveyed pursuant to 15 CFR Parts 14 or 24 and 2 CFR Part 200, as applicable, Recipient or the transferor shall add to the document conveying such interest a Covenant of Purpose, Use and Ownership. [operating unit] will in its sole discretion determine whether the Covenant is satisfactory. [operating unit] may require an opinion of counsel for recipient that the Covenant is valid and enforceable according to its terms and has been properly recorded.

5. It is stipulated and agreed that the terms hereof constitute a reasonable restraint on alienation of use, control, and possession of or title to the Property given the Federal Interest expressed herein.

6. This covenant shall run with the land.

IN WITNESS WHEREOF, the recipient has hereunto set their hand as of the day and year first above written by their duly authorized officer. A completed duly recorded copy of this Covenant shall be forwarded to [operating unit]. (The appropriate acknowledgment must be included for recording in Recipient's jurisdiction.)

_____
Recipient

BY_____
Title

ATTEST:

By_____

Title_____

17. GUIDELINES FOR THE PREPARATION OF PUBLIC NOTICES ANNOUNCING THE AVAILABILITY OF FINANCIAL ASSISTANCE: FEDERAL FUNDING OPPORTUNITY (FFO) ANNOUNCEMENTS AND *FEDERAL REGISTER* NOTICES

A. Background

1. 2 CFR § 200.203 (Notices of funding opportunities) and Appendix 1 to 2 CFR Part 200 (Full text of notice of funding opportunity) contain the current requirements for notices of funding opportunities.

2. It is the policy of the Department that:

a. All FFOs will conform to the formats set forth in the guidance mentioned above and summarized below.

b. All FFOs will be posted on the OMB-designated governmentwide Web site for finding and applying for Federal financial assistance; the current site is http://www.grants.gov/.

c. Should an operating unit determine that it will also publish a notice in the *Federal Register*, only the minimum information legally required under the Administrative Procedure Act (5 U.S.C. §§ 551-559) will be published, as described in Sections C. and D., below.

B. Format of FFO

The format has two parts, the first part provides summary information (*see* 2 CFR § 200.203, Notices of funding opportunities) and the second part includes the full text of the announcement (*see* Appendix 1 to 2 CFR Part 200).

1. Summary Information.

a. The following information must be displayed prominently, in the sequential order provided, and in a location preceding the full text of the announcement:

(1) Federal Awarding Agency Name(s) [Required]. Include the name of the Department, the operating unit and the specific office(s) within the unit (e.g., bureau, directorate, division, or institute) that are involved in the funding opportunity.

(2) Funding Opportunity Title [Required]. If there is a program name (within the broader title) that is different from the Funding Opportunity Title, include that name here.

(3) Announcement Type [Required]. Indicate whether this is the initial announcement of this funding opportunity or a modification of a previously announced opportunity. If it modifies a previous announcement, provide the date of that announcement and identify the portions that are being modified. A modification does not need to include all of the sections of the full announcement text, only those sections being amended.

(4) Funding Opportunity Number [Required, if applicable]. An operating unit may assign unique numbers to, for example, identify specific competitions or programs. If a number is assigned, include it. If it modifies a previous announcement, provide the number of that announcement.

(5) Catalog of Federal Domestic Assistance (CFDA) Number(s) [Required]. The program name identified in the CFDA may be given along with the CFDA number. CFDA numbers often include more than one program. Each program within a CFDA number must include additional numbers assigned only to that program, so that it can be distinguished from other programs listed under the same CFDA number.

(6) Key Dates [Required]. Include key dates that potential applicants need to know. Key dates include due dates for applications or Executive Order 12372 submissions, as well as any letters of intent or pre-applications. For any announcement issued before a program's application materials are available, this section must also include the date on which those materials will be released.

b. Optional, Additional Summary Content. Following the required overview information described above, the operating unit may present other information. Present any optional overview information in a sequential order that parallels the organization of the full text of the announcement. Examples of overview information that could help potential applicants decide whether to read the full announcement are: a concise description of the funding opportunity, the total amount to be awarded, the anticipated amounts and/or numbers of individual awards, the types of instruments that may be awarded, who is eligible to apply, whether cost sharing is required, and any limitations on the numbers of applications that each applicant may submit. Other information that could later help applicants more readily find what they need (e.g., where one can get application materials) may also be included.

2. Full Text of Announcement.

The full text of the announcement is organized in sections. The format indicates immediately following the title of each section whether that section is required in every announcement or is optional. The format is designed so that similar types of information will appear in the same sections in announcements of different Federal funding opportunities. Toward that end, there is text in each of the format's sections to describe the types of information to be included in that section of an actual announcement. If an operating unit intends to include information on a subject that the format does not specifically discuss, address that subject in whatever section(s) is most appropriate. For example, if an operating unit chooses to address performance goals in the announcement, it might do so in the funding opportunity description, the application content, and/or the reporting requirements. Similarly, when this format calls for a type of information to be in one particular section, an operating unit intending to address that subject in other sections must use cross-references between the sections (there must be hyperlinks for cross-references in any electronic versions of the announcement). The sections required in the full text of the announcement are described below.

a. Program Description [Required]. This section may be as long as needed to adequately communicate to potential applicants the areas or projects for which funding may be provided. It describes the operating unit's funding priorities (on a broader level than those which are to be used as selection factors and described in paragraph e., below) or the technical or focus areas in which the operating unit intends to provide assistance. As appropriate, it may include any program history (e.g., whether this is a new program or a new or changed area of program emphasis). This section may communicate indicators of successful projects (e.g., if the program encourages collaborative

efforts) and may include examples of projects that have been funded previously. This section may include other information the operating unit deems necessary, and must at a minimum include citations for authorizing statutes and regulations for the funding opportunity.

b. Federal Award Information [Required]. This section must include sufficient information to help an applicant make an informed decision about whether to submit an application. Relevant information must include, to the extent available, the total estimated amount of funding that the operating unit expects to award through the announcement; the anticipated number of awards; the expected amounts of individual awards (which may be a range); the amount of funding per award, on average, experienced in previous years; and the anticipated start dates and periods of performance for new awards. This section also must address whether applications for renewal or supplementation of existing projects are eligible to compete with applications for new awards. In addition, it must indicate whether multi-year applications are being sought. This section also must indicate the type(s) of assistance instrument (i.e., grant, cooperative agreement, and/or other instrument) that may be awarded if applications are successful. If cooperative agreements may be awarded, this section must describe the "substantial involvement" that the operating unit expects to have. It must also be stated if procurement contracts may be awarded.

c. Eligibility Information [Required]. This section addresses considerations or factors that make an applicant or application eligible or ineligible for consideration. This includes the eligibility of particular types of applicant organizations, any factors affecting the eligibility of the principal investigator or project director, and any criteria that make particular projects ineligible. It must be clear whether an applicant's failure to meet an eligibility criterion by the time of an application deadline will result in the operating unit returning the application without review or, even though an application may be reviewed, will preclude the operating unit from making an award. Key elements to be addressed are:

(1) Eligible Applicants [Required]. Announcements must clearly identify the types of entities that are eligible to apply. If there are no restrictions on eligibility, this section may simply indicate that all potential applicants are eligible. If there are restrictions on eligibility, it is important to be clear about the specific types of entities that are eligible, not just the types that are ineligible. An operating unit may not eliminate organizations that are eligible under the statute, or restrict competition to certain applicants, without justification. For example, if the program is limited to non-profit organizations subject to Section 501(c)(3) of the tax code, the announcement must say so. Similarly, it is better to state explicitly that Native American tribal organizations are eligible than to assume that they can unambiguously infer that from a statement that non-profit or local government organizations may apply. Eligibility also can be expressed by exception, (e.g., open to all types of domestic applicants other than individuals). This section should refer to any portion of Section d. (below) specifying documentation that must be submitted to support an eligibility determination (e.g., proof of 501(c)(3) status as determined by the Internal Revenue Service or an authorizing tribal resolution). To the extent that any funding restriction in Section D.6 could affect the eligibility of an applicant or project, the announcement must either restate that restriction in this section or provide a cross-reference to its description in Section d.6. *See* also 68 FR 5814.

(2) Cost Sharing or Matching [Required]. Announcements must state whether there is required cost sharing, matching, or cost participation without which an application would be ineligible (if cost

sharing is not required, the announcement must explicitly say so). Required cost sharing may be a certain percentage or amount, or may be in the form of contributions of specified items or activities (e.g., provision of equipment). It is important that the announcement be clear about any restrictions on the types of cost (e.g., in-kind contributions) that are acceptable as cost sharing. Cost sharing as an eligibility criterion includes requirements based in statute or regulation; *see* 2 CFR § 200.306 (Cost sharing or matching) for more information. This section must refer to the appropriate portion(s) of Section d. stating any pre-award requirements for submission of letters or other documentation to verify commitments to meet cost-sharing requirements if an award is made. If cost sharing is encouraged, this paragraph must include a cross reference to the evaluation criteria or selection factor which will be used for assessment.

(3) Other [Required, if applicable]. If there are other eligibility criteria (i.e., criteria that have the effect of making an application or project ineligible for award, whether referred to as "responsiveness" criteria, "go-no go" criteria, "threshold" criteria, or in other ways), the announcement must clearly state them and include a reference to the regulation or requirement that describes the restriction. For example, if entities that have been found to be in violation of a particular Federal statute are ineligible, it is important to say so. In this section the operating unit also must state any limit on the number of applications an applicant may submit under the announcement and make clear whether the limitation is on the submitting organization, individual investigator/program director, or both. Also use this section to address any eligibility criteria for beneficiaries or for program participants other than award recipients.

d. Application and Submission Information.

(1) Address to Request Application Package [Required]. Inform potential applicants how to obtain all required application forms, kits, or other materials needed to apply (if this announcement contains everything they need, this section need only say so) and provide an Internet address where they can access the materials. With respect to electronic methods for providing information about funding opportunities or accepting applicants' submissions of information, each operating unit is responsible for compliance with Section 508 of the Rehabilitation Act of 1973, as amended by the Workforce Investment Act of 1998. Since high-speed Internet access is not yet universally available for downloading documents, program offices should also identify a way for potential applicants to request paper copies of materials, such as a U.S. Postal Service mailing address, telephone or fax number, Telephone Device for the Deaf (TDD) or Text Telephone (TTY) number, and/or Federal Information Relay Service (FIRS) number.

(2) Content and Form of Application Submission [Required]. This section must identify the required content of an application and the forms or formats that an applicant must use to submit it. If any requirements are stated elsewhere because they are general requirements that apply to multiple programs or funding opportunities, this section may refer to where those requirements may be found. This section also must address any preliminary submissions that the operating unit requires or encourages, either to facilitate its own planning or to provide potential applicants with feedback to help them decide whether to submit a full proposal. This section must either include required forms or formats as part of this announcement or state where the applicant may obtain them.

This section must specifically address content and form or format requirements for:

(a) Pre-applications, letters of intent, or white papers that the operating unit requires or encourages (*see* Section d.3), including any limitations on the number of pages or other formatting requirements similar to those for full applications.

(b) The application as a whole. For hard copy submissions, that could include any limitations on the number of pages, font size and typeface, margins, paper size, number of copies, and sequence or assembly requirements. If electronic submission is permitted or required, that could include special requirements for formatting or signatures. With respect to electronic methods for providing information about funding opportunities or accepting applicants' submissions of information, each operating unit is responsible for compliance with Section 508 of the Rehabilitation Act of 1973, as amended by the Workforce Investment Act of 1998.

(c) Component pieces of the application (e.g., if all copies of the application must bear original signatures on the face page or the program narrative may not exceed 10 pages). This includes any pieces that may be submitted separately by third parties (e.g., references or letters confirming commitments from third parties that will be contributing a portion of any required cost sharing).

(d) Information that applicants must submit when requested by the operating unit, after notification of intent to make and award but prior to making an award. This could include evidence of compliance with human subjects requirements or information the operating unit needs to comply with the National Environmental Policy Act (NEPA).

(3) Unique Entity Identifier and System for Award Management (SAM) [Required]. The announcement must state clearly that each applicant (unless the applicant is an individual or Federal awarding agency that is excepted from those requirements under 2 CFR § 25.110(b) or (c), or has an exception approved by the operating unit under 2 CFR § 25.110(d)) is required to:

(i) Be registered in SAM before submitting its application;

(ii) Provide a valid unique entity identifier in its application; and

(iii) Continue to maintain an active SAM registration with current information at all times during which it has an active Federal award or an application under consideration by the operating unit or another Federal agency.

It also must state that the operating unit may not make an award to an applicant until the applicant has complied with all applicable unique entity identifier and SAM requirements and, if an applicant has not fully complied with the requirements by the time the operating unit is ready to make an award, the operating unit may determine that the applicant is not qualified to receive an award and use that determination as a basis for making an award to another applicant.

(4) Submission Dates and Times [Required]. The announcement must identify due dates and times for all submissions. This includes not only the full applications but also any preliminary submissions (e.g., letters of intent, white papers, or pre-applications). It also includes any other

submissions of information before award that are separate from the full application. If the funding opportunity is a general announcement that is open for a period of time with no specific due dates for applications, this section must say so. Note that the information on dates that is included in this section also must appear with other overview information in a location preceding the full text of the announcement (*see* Section B.1. of this chapter).

For each type of submission addressed, indicate whether the submission is encouraged or required and, if required, any deadline date for submission (or dates, if the operating unit plans more than one cycle of application submission, review, and award under the announcement). The announcement must state (or provide a reference to another document that states):

(a) Any deadline in terms of a date and local time. Due dates should not fall on a Saturday, Sunday, or Federal holiday.

(b) What the deadline means. Specify the date and time by which the operating unit must receive the application or the date by which the application must be postmarked, or something else; in addition, specify how that deadline depends, if at all, on the submission method (e.g., mail, electronic, or personal/courier delivery).

(c) The effect of missing a deadline. Whether late applications are neither reviewed nor considered or, if waivers of deadlines are permitted, describe the basis for making such waivers.

(d) How the receiving Federal office determines whether an application or pre-application has been submitted before the deadline. This includes the form of acceptable proof of mailing or system-generated documentation of receipt date and time.

(e) This section also may indicate where, when, and in what form the applicant will receive an acknowledgment of receipt.

Consider displaying the submission date and time information in ways that will be easy to understand and use. It can be difficult to extract all needed information from narrative paragraphs, even when they are well written. A tabular form for providing a summary of the information may help applicants for some programs and give them what effectively could be a checklist to verify the completeness of their application package before submission.

(5) Intergovernmental Review [Required, if applicable]. State if the funding opportunity is subject to Executive Order (EO) 12372 (Intergovernmental Review of Federal Programs). In alerting applicants that they must contact their State's Single Point of Contact (SPOC) to find out about and comply with the State's process under EO 12372, an operating unit may wish to inform them that the names and addresses of the SPOCs are listed in the Office of Management and Budget's home page at: https://www.whitehouse.gov/omb/grants_spoc/.

(6) Funding Restrictions [Required]. The funding opportunity announcement must include information on funding restrictions in order to allow an applicant to develop an application and budget consistent with program requirements and DOC policy. Examples are whether construction is an allowable activity, if there are any limitations on direct costs such as foreign travel or

equipment purchases, if there are any limits on indirect costs (or facilities and administrative costs) and if awards will not allow reimbursement of pre-award costs. The applicant must be advised that it is DOC policy that DOC funds may not be used to pay for management fees in excess of costs or profits, unless statutorily authorized.

[**Note**: Per Chapter 9 of this Manual, requests for fee or profit by recipients of any type should be referred to FALD for review.]

(7) Other Submission Requirements [Required]. This section must address any other submission requirements not included in the other paragraphs of this section. This might include the format of submission, i.e., paper or electronic, for each type of required submission. Applicants must not be required to submit in more than one format and this section must indicate whether they may choose whether to submit applications in hard copy or electronically, may submit only in hard copy, or may submit only electronically. This section also must indicate where applications (and any pre-applications) must be submitted if sent by postal mail, electronic means, or hand-delivery. For postal mail submission, this must include the name of an office, official, individual or function (e.g., application receipt center) and a complete mailing address, including room number or courier reception point. For electronic submission, this must include the URL (Grants.gov) or e-mail address; whether a password(s) is required; whether particular software or other electronic capabilities are required; what to do in the event of system problems and a point of contact that will be available in the event the applicant experiences technical difficulties. With respect to electronic methods for providing information about funding opportunities or accepting applicants' submissions of information, each operating unit is responsible for compliance with Section 508 of the Rehabilitation Act of 1973, as amended by the Workforce Investment Act of 1998.

e. Application Review Information.

(1) Criteria [Required]. This section must address the criteria that the operating unit will use to evaluate applications. This includes the merit and other review criteria that evaluators will use to judge applications, including any statutory, regulatory, or other preferences (e.g., minority status or Native American tribal preferences) that will be applied in the review process. These criteria are distinct from eligibility criteria that are addressed before an application is accepted for review and any program policy or other selection factors that are applied during the selection process, after the review process is completed. The intent is to give applicants visibility into the evaluation process so that they can make informed decisions when preparing their applications and so that the process is as fair and equitable as possible. The announcement must clearly describe all criteria, including any sub-criteria. If criteria or sub-criteria vary in importance, the announcement must specify the relative percentages, weights, or other means used to distinguish among them. For statutory, regulatory, or other preferences, the announcement must provide a detailed explanation of those preferences with an explicit indication of their effect (e.g., whether they result in additional points being assigned). If an applicant's proposed cost sharing will be considered in the review process (as opposed to being an eligibility criterion described in Section c.(2)), the announcement must specifically address how it will be considered (e.g., to assign a certain number of additional points to applicants who offer cost sharing, or to break ties among applications with equivalent scores after evaluation against all other factors). If cost sharing will not be considered in the evaluation, the announcement must say so, so that there is no ambiguity for potential applicants. Vague

statements that cost sharing is encouraged, without clarification as to what that means, are unhelpful to applicants so the announcement must explain how it will be addressed in the evaluation process. It also is important that the announcement be clear about any restrictions on the types of cost (e.g., in-kind contributions) that are acceptable as cost sharing.

(2) Review and Selection Process [Required]. This section may vary in the level of detail provided. The announcement must list any selection factors (program policy or other factors or elements), other than merit evaluation criteria, that the selecting official may use in selecting applications for award (e.g., availability of funding, geographical dispersion, program balance, funding priorities, or diversity). This section should also indicate who is responsible for evaluation against the merit criteria (e.g., peers external to the operating unit or Federal operating unit personnel) and/or who makes the final selections for award. If there is a multi-phase review process (e.g., an external panel providing assessments to internal operating unit personnel who make final recommendations to the selecting official), the announcement should describe each of the phases and it also must include the number of people on an evaluation panel (minimum of 3). The announcement may describe how the panel operates, the way reviewers are selected, reviewer qualifications, and the way that conflicts of interest are avoided. In addition, include if applicants are permitted to nominate suggested reviewers of their applications or suggest those they feel may be inappropriate due to a conflict of interest.

If the operating unit anticipates that the total Federal share of any award issued under the applicable FFO will be greater than the simplified acquisition threshold, over the period of performance (*see* 2 CFR § 200.88 (Simplified acquisition threshold)), this section must also inform applicants:

(a) That the operating unit, prior to making an award with a total amount of Federal share greater than the simplified acquisition threshold, is required to review and consider any information about the applicant that is in the designated integrity and performance system accessible through SAM (currently FAPIIS);

(b) That an applicant, at its option, may review information in the designated integrity and performance systems accessible through SAM and comment on any information about itself that an awarding agency previously entered and is currently in the designated integrity and performance system accessible through SAM;

(c) That the operating unit will consider any comments by the applicant, in addition to the other information in the designated integrity and performance system, in making a judgment about the applicant's integrity, business ethics, and record of performance under Federal awards when completing the review of risk posed by applicants as described in 2 CFR §200.205 (Federal awarding agency review of risk posed by applicants).

(3) Anticipated Announcement and Award Dates [Optional]. This section is intended to provide applicants with information they can use for planning purposes. If there is a single application deadline followed by the simultaneous review of all applications, the operating unit must include in this section information about the anticipated dates for announcing or notifying successful and unsuccessful applicants and for having awards in place. If applications are received and evaluated

on a “rolling” basis at different times during an extended period, it is appropriate to give applicants an estimate of the time needed to process an application and notify the applicant of the operating unit's decision.

f. Federal Award Administration Information

(1) Federal Award Notices [Required]. This section must address what a successful applicant can expect to receive following selection. If the operating unit’s practice is to provide a separate notice stating that an application has been selected before it actually makes the Federal award, this section must indicate that the separate notice is not an authorization to begin performance. This section should also indicate that the notice of award signed by the grants officer (or equivalent) is the authorizing document, and whether it is provided through postal mail or by electronic means and to whom. It also may address the timing, form, and content of notifications the operating unit will provide to unsuccessful applicants. The award documents must incorporate the FFO into the award.

(2) Administrative and National Policy Requirements [Required]. This section must identify the usual administrative and national policy requirements an operating unit's awards may include. The *Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements*, published in the *Federal Register* notice, contains this information; include a reference to the most current version of the Department’s notice. Providing this information allows a potential applicant to identify any requirements with which it might have difficulty complying if its application is successful. In those cases, early notification about the requirements allows the potential applicant to decide not to apply or to take needed actions before award. For the same reason, this section should inform potential applicants about special requirements that could apply to particular awards after the review of applications and other information, based on the particular circumstances of the effort to be supported (e.g., if human subjects were to be involved or if some situations may justify special terms on intellectual property, data sharing or security requirements).

(3) Reporting [Required]. This section must include general information about the type (e.g., financial or performance), frequency (minimum and maximum), and means of submission (paper or electronic) of post-award reporting requirements. Highlight any special reporting requirements for awards under this funding opportunity that differ (e.g., by report type, frequency, form/format, or circumstances for use) from what the operating unit's awards usually require. Performance reports or special data requests may require Paperwork Reduction Act approval.

If the Federal share of any award may include more than $500,000 over the period of performance, this section must inform potential applicants about the post award reporting requirements for recipients with more than $10 million in Federal-wide funding, as reflected in Appendix XII to 2 CFR Part 200 —Award Term and Condition for Recipient Integrity and Performance Matters.

g. Federal Awarding Agency Contact(s) [Required]. Provide potential applicants a point(s) of contact for answering questions or helping with problems while the funding opportunity is open. The intent of this requirement is to be as helpful as possible to potential applicants, so consider approaches such as giving:

(1) Points of contact who may be reached in multiple ways (e.g., by telephone, fax, and/or e-mail, as well as regular/express mail).

(2) A fax or e-mail address that multiple people access, so that someone will respond even if others are unexpectedly absent during critical periods.

(3) Different contacts for distinct kinds of help (e.g., one for questions of programmatic content and a second for administrative questions).

h. Other Information [Required]. This section must include items (1) and (2) below and may include any additional information, items (3) – (5) for example, that will assist a potential applicant:

(1) [Required] Alert applicants to the need to identify proprietary information and inform them about the way the operating unit will handle it. The following language shall be included in all FFOs:

The applicant acknowledges and understands that information and data contained in applications for financial assistance, as well as information and data contained in financial, performance and other reports submitted by applicants, may be used by the Department of Commerce in conducting reviews and evaluations of its financial assistance programs. For this purpose, applicant information and data may be accessed, reviewed and evaluated by Department of Commerce employees, other Federal employees, Federal agents and contractors, and/or by non-Federal personnel, all of whom enter into appropriate conflicts of interest and nondisclosure agreements covering the use of such information. As may be provided in the terms and conditions of a specific financial assistance award, applicants are expected to support program reviews and evaluations by submitting required financial and performance information and data in an accurate and timely manner, and by cooperating with Department of Commerce and external program evaluators. In accordance with 2 C.F.R. § 200.303(e), applicants are reminded that they must take reasonable measures to safeguard protected personally identifiable information and other confidential or sensitive personal or business information created or obtained in connection with a Department of Commerce financial assistance award.

In addition, Department of Commerce regulations implementing the Freedom of Information Act (FOIA), 5 U.S.C. Sec. 552, are found at 15 C.F.R. Part 4, Public Information. These regulations set forth rules for the Department regarding making requested materials, information, and records publicly available under the FOIA. Applications submitted in response to this Federal Funding Opportunity may be subject to requests for release under the Act. In the event that an application contains information or data that the applicant deems to be confidential commercial information that should be exempt from disclosure under FOIA, that information should be identified, bracketed, and marked as Privileged, Confidential, Commercial or Financial Information. In accordance with 15 CFR § 4.9, the Department of Commerce will protect from disclosure confidential business information contained in financial assistance applications and other documentation provided by applicants to the extent permitted by law.

(2) [Required] Include certain routine notices to applicants (e.g., that the Government is not obligated to make any award as a result of the announcement or that only grants officers can bind the Government to the expenditure of funds).

(3) [Optional] Indicate whether this is a new program or a one-time initiative.

(4) [Optional] Mention related programs or other upcoming or ongoing operating unit funding opportunities for similar activities.

(5) [Optional] Include Internet addresses for operating unit Web sites that may be useful to an applicant in understanding the program (NOTE: make certain that any Internet sites are current and accessible). With respect to electronic methods for providing information about funding opportunities or accepting applicants' submissions of information, each operating unit is responsible for compliance with Section 508 of the Rehabilitation Act of 1973, as amended by the Workforce Investment Act of 1998.

C. Publication in the *Federal Register*

Grants.gov is the current OMB-designated governmentwide Web site for posting, finding and applying for Federal financial assistance. In a 29 November, 2010 memorandum, AGC/L&R, after consultation with FALD, determined that Notices of Funding Availability (NOFAs) and other similar notices soliciting proposals for grants and cooperative agreements need only be forwarded to AGC/L&R when funding is to exceed $100 million or if the announcement is for a new grant program. Operating units are no longer required to publish NOFAs in the Federal Register unless required by statute or regulation. Operating units may want to seek legal counsel from AGC/L&R or FALD regarding the decision not to publish a notice in the Federal Register. Should an operating unit determine that it will also publish a notice in the Federal Register, Department policy is that the operating unit will publish only the minimum information legally required under the Administrative Procedure Act (5 U.S.C. §§ 551-559), which includes the following information contained in the notice of funding opportunity:

1. Summary description of the program;

2. Deadline dates;

3. Addresses for submission of applications;

4. Information contacts (including electronic access);

5. Amount of funding available;

6. Statutory authority;

7. CFDA number;

8. Eligibility requirements, including any cost sharing or matching requirements;

9. Intergovernmental Review requirements;

10. Evaluation criteria used by the merit reviewers;

11. Selection procedures, including funding priorities/selection factors/policy factors to be applied by the selecting official; and

12. Administrative and National Policy Requirements. *See* paragraph E.2.g.(9), below, for specific language.

To the extent any of the above have been codified or otherwise published in the *Federal Register* a cross reference to the appropriate CFR or *Federal Register* publication may be substituted.

D. *Federal Register* Format Requirements

Federal Register notices must be drafted in accordance with the guidelines delineated in the *Federal Register* Document Drafting Handbook, which includes the submission requirements. In accordance with the handbook, notices must be organized as follows:

1. Heading. The headings must identify the billing code, issuing agency, the CFR title, docket number, regulation identification number (RIN) (if applicable) and subject matter of the document and must be presented in the following format:

   a. Agency is always the Department of Commerce.

   b. Subagency (if necessary) identifies the operating unit which is issuing the notice.

   c. Docket number.

   d. RIN (if applicable).

   e. Subject heading describes the content of the notice in a concise statement.

   The following is an example of how the headings must appear in the notice:

   DEPARTMENT OF COMMERCE
   National Oceanic and Atmospheric Administration
   [Docket No. _____]
   RIN _____
   Financial Assistance for Oyster Disease Research

2. Preamble. The preamble is the main focus of the notice and shall follow the Subject Heading. It arranges the content of the document into a uniform format by providing information on "who, what, where, when, and why." This allows the reader to review the document and assess its main points, determine whether it is of interest, and decide whether to respond to the notice. The preamble should be organized in the following format with the captions typed in all capital letters:

a. AGENCY. Identifies the operating unit issuing the document. The caption usually repeats the name of the operating unit as carried in the document's headings. When a subagency and operating unit name appear together, the subagency name is carried first and the agency name is represented by its commonly used acronym or other shortened expression (for example, Economic Development Administration, DOC). This caption may, in addition, identify a smaller organizational unit within the operating unit (for example, National Marine Fisheries Service, NOAA).

b. ACTION. Identifies the document category. This section must not be used to summarize the document. In this instance, the document category is a "Notice."

c. SUMMARY. Briefly describes in plain English what action is being taken, why the action is necessary, and the intended effect of the action. Any extensive discussion or details belong~~s~~ under the SUPPLEMENTARY INFORMATION section.

d. DATES. Contains any pertinent dates that the reader may need to know such as the closing dates for submission of preapplications (if applicable) and applications, anticipated number of days required to process applications, and date when awards are expected to be made. To provide the public reasonable notice and an opportunity to apply, the Federal awarding agency must generally make all funding opportunities available for application for at least 60 calendar days. *See* 2 CFR § 200.203 (Notices of funding opportunities).

[**Note**: Because the publication date of the notice will not be known until it is submitted to the Office of Federal Register, inserting specific calendar dates is discouraged; rather, allow the Office of Federal Register to calculate the dates by including the following where dates must appear in the notice: {Insert (number of days, but no less than 60) after the date of publication in the *Federal Register*}.]

e. ADDRESSES. Contains pertinent address(es) for the reader such as where to write to obtain an application package, where to send an application, or where to send correspondence for any other purpose.

f. FOR FURTHER INFORMATION CONTACT. Contains the name and telephone number of a person within the operating unit who can answer questions about the notice.

g. SUPPLEMENTARY INFORMATION. Contains detailed narrative information about the notice. Remember, as is illustrated in item (9), below, to the extent any of the following items have been codified or otherwise published in the *Federal Register* a cross reference to the appropriate CFR or *Federal Register* publication may be substituted. At a minimum, the following items must be included in this section:

(1) Authority. The statutory authority, EO, or any other legal authority that authorizes the program to provide financial assistance.

(2) Catalog of Federal Domestic Assistance (CFDA). The CFDA number(s) and program title(s).

(3) Program Description. A concise description of the goals and objectives of the program. The description must explain why Federal assistance is being provided, the intended beneficiaries of funded projects, and expected project results/ achievements.

(4) Funding Availability. The amount of funds available, expected amount of individual awards, and the purposes for which funds may be spent. If the publication of the notice precedes the passage of the appropriate fiscal year funding legislation, the announcement must state an approximate amount and that funds will be contingent upon availability of funding.

(5) Eligibility Criteria. An explicit description of who is eligible to apply (e.g., States, universities, non-profit organizations, for-profit organizations, individuals, etc.), including any limitations imposed by the funding operating unit. Include here whether any cost sharing or matching is required to receive an award.

(6) Evaluation Criteria. The evaluation criteria that will be used in evaluating and selecting applications for discretionary funding consideration must be delineated. The criteria must be as specific as possible and the relative weight of each criterion must be given. If each criterion is of equal weight, the notice must so state. The criteria must provide an adequate basis for a review panel to review an applicant's capabilities and assess its likelihood of successfully performing under the award. Evaluation criteria must address such areas as adequacy of project plans, potential contribution to program objectives, key personnel qualifications, capabilities of the applicant organization, proposed costs, etc.

(7) Selection Procedures. Describe the process and procedures by which recommended applications will be selected. If the operating unit plans to select projects based upon funding priorities/selection factors/policy factors, those must be stated and an explanation must be provided as to how they will be applied to select projects out of the rank order established under the merit evaluations.

(8) Intergovernmental Review. [Insert applicable statement below]

(a) Applications under this program are subject to Executive Order (EO) 12372 (Intergovernmental Review of Federal Programs).

(b) Applications under this program are not subject to Executive Order (EO) 12372 (Intergovernmental Review of Federal Programs).

[**Note:** The Office of Legislative and Intergovernmental Affairs (OLIA) has the responsibility for implementing EO 12372.]

(9) Administrative and National Policy Requirements. This section must read as follows: "Department of Commerce Pre-Award Notifications for Grants and Cooperative Agreements, which are contained in the *Federal Register* Notice of 26 December 2014 (79 FR 78390), are applicable to this solicitation."

(10) Administrative Procedure Act and Regulatory Flexibility Act. Prior notice and comment are not required under 5 U.S.C. Section 553, or any other law, for rules relating to public property, loans, grants, benefits or contracts (5 U.S.C. Section 553(a)). Because prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. Section 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. *et seq*.) are inapplicable. Therefore, a regulatory flexibility analysis is not required and has not been prepared.

(11) The Supplementary Information must also address EO 13132 (Federalism) and EO 12866 (Regulatory Planning and Review).

(12) Information Collection. Notwithstanding any other provisions of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act, unless that collection displays a current valid OMB control number.

3. Signature. The signature of the person authorized to sign a notice submitted for publication in the *Federal Register* must be placed at the end of the document. The signature must be handwritten in ink, and the name and title of the person signing must be typed directly beneath the signature.

E. Coordination and Clearance

1. Operating units are responsible for obtaining clearances of proposed FFOs before they are posted. Those FFO announcements with funding that exceeds $100 million and announcements for new grant programs will be forwarded by FALD to AGC/L&R so that AGC/L&R may coordinate the review and clearance of those announcements with OMB. FALD is the final Departmental clearance authority. Proposed FFOs must be cleared by the Grants Officer, or designate, and the Grants Officer or designate's clearance and/or comments must be provided to FALD before FALD will clear an FFO.

2. Operating units are responsible for processing and coordinating the clearance of all *Federal Register* notices. Operating units must distribute all notices to OAM, the Electronic Government Team within the Office of Information Technology Policy and Planning, AGC/L&R, and FALD for comment and/or clearance. Once all comments have been reconciled, and clearances received from OAM and the Electronic Government Team, operating units must submit the notice to FALD for final Departmental clearance. Once FALD provides its clearance, the operating unit must upload the notice into the Department's Regulatory Tracking System (RTS), which is the primary tracking system for all notices and regulations. AGC/L&R will approve the notice submitted through RTS and issue a docket number, which authorizes publication in the *Federal Register*. After issuance of the docket number by AGC/L&R, the operating unit is responsible for submitting the notice to the Office of the *Federal Register* for publication and to Congress and the General Accounting Office (GAO), as required by 5 U.S.C. 801 *et seq*.

18. MULTI-YEAR FUNDING PROCEDURES

A. General

This chapter prescribes policies for incrementally funding multi-year awards when full funding of the complete project period is not available at the beginning of the project period. Multi-year funding allows Federal funds for a multi-year award to be provided in increments or by allotment, usually on an annual basis.

B. Multi-Year Awards

Multi-year awards are awards which have a project period of more than 12 months of activity. Multi-year awards are partially funded when the awards are approved, and are subsequently funded in increments. The Department encourages long-range program planning for the award and administration of financial assistance actions. One mechanism for facilitating this goal is funding through multi-year awards. This particularly pertains to awards that support research projects that may span several years. One of the purposes of multi-year awards is to reduce the administrative burden on both the applicant and the operating unit. For example, with proper planning, one application can suffice for the entire multi-year award period. It is the Department's policy that the period of activity of multi-year awards should not exceed five years. Grants Officers should establish additional internal policies for consistent selection and approval of programs and awards that may be funded under these multi-year funding procedures.

C. Multi-Year Funding Principles

1. Reliability and Predictability. Multi-year funding may be considered for programs or long-term awards where funding for the subsequent year(s) is anticipated but not provided at the time the award is approved and where the estimated budget for future funding periods can be forecast with some degree of reliability. These procedures should not be used for programs or long-term awards where the funding allocation may substantially change (either increase or decrease) from initial projections. Multi-year funding is provided by adding allotments of funds, usually on an annual basis, to extend the funding period within the previously approved project period.

2. Competition. Recipients of multi-year awards should be selected after full and open competition. However, projects under multi-year funding awards do not re-compete each year even though the awards may be funded annually. At the outset the Grants Officer would approve the award for a project period of more than one year (typically three to five years), and continuation amendments to add funding and extend the funding period (or add funding periods if time limited funds) are later approved with less administrative processing by the recipient, the Program Office, and the Grants Office. This feature – competing only once for a multi-year period of support – permits the grantee and the operating unit to more reliably plan for future years. The allotment of funding on an annual basis preserves the ability of the operating unit to discontinue support at points during the project period if funding is unavailable or the government's interest otherwise requires it.

3. Request for Applications. Program Offices must clearly identify in their Federal Funding Opportunity (FFO) announcements when multi-year funding is available under the program. The FFO must clearly state that funding for each year's activity is contingent upon the availability of funds, satisfactory performance, and is at the sole discretion of the agency. The FFO should solicit applications covering the entire multi-year period and must identify the amount currently available as well as the amounts projected to be available in the future. Instructions for applying for a multi-year award must be contained in the FFO.

4. Exceptions. Not all programs or awards are good candidates for multi-year funding. Grants Officers must exercise good judgment in determining when to approve multi-year awards. Multi-year funding is not appropriate and a fully funded award must be used in the following circumstances:

a. The project is exclusively for construction, alterations or renovations, or acquisition of property;

b. At the time of award, the total period of DOC support for the project is planned to be less than 24 months. Agencies may apply multi-year procedures to incremental funding for time periods less than a year only if warranted due to program requirements and funding availability.

5. Duration of Awards. The initial funding period and subsequent continuation amendments extending the funding period should usually be for 12 months but the initial funding period may vary from 12 months in order to provide for the continuation of the funding period at an advantageous date, such as the end of the grantee's fiscal year or to coincide with phases of the project contained in the proposal and budget. The applicant has more flexibility in carrying over funds throughout the entire project period when no-year appropriations are used to fund the award.

6. Amendments. The commitment to obligate the amount of available funding for subsequent funding periods with continuation amendments shall be clearly conditioned upon the availability of funds, satisfactory progress by the grantee and the Program Office's determination that continued funding is in the best interest of the government.

a. An amendment to obligate prospective funding available shall be made on Form CD-451 (Amendment to Financial Assistance Award) prior to the expiration of each funding period. The Grants Officer shall execute the amendment after recommendation by the Program Officer that the performance under the current funding period is satisfactory and funds are available. The Program Officer should submit to the Grants Officer any continuation application with budget revisions, if applicable. A documented recommendation and certification of funding availability should be submitted at least 30 days prior to the expiration of the funding period.

b. The recipient should submit an amended application to the Program Officer for review and recommendation to the Grants Officer for approval before the end of the current funding period if the upcoming funding period will have a change in the scope of work or an increase in the funding level from that which was last approved. Otherwise, there is generally no requirement for the recipient to submit subsequent full applications under a multi-year project period.

c. Unobligated balances will automatically be carried over upon the continuation of the funding period. For unobligated balances, the SF-425 (Federal Financial Report) will be used as the basis for determining if there is any unobligated balance to be carried over at the end of the current funding period.

d. It is important to distinguish clearly between (1) stopping support of a project by not continuing the funding period with continuation amendments, and (2) termination of a grant. A grant gives the recipient legal authority to expend the funds awarded. The Department must give recipients due process prior to terminating a grant for violation of its terms. Except where required by statute, recipients have no right to a formal appeal process when a continuation is denied because neither the grant approval nor extension of a funding period or project period gives the recipient any legal entitlement to receive additional funds. Awards with multi-year funding will generally be funded in allotments adding to or continuing the funding period. The new award document (Form CD-450) initially obligates only the first allotment of funds.

D. Preparation of New Award

Following are instructions for the preparation of Form CD-450 (Financial Assistance Award) and Special Award Conditions for awards with multi-year funding.

1. The CD-450 for a multi-year award should be prepared as reflected in the guidelines and procedures and described below:

a. The total amount of funding shown in the upper right-hand corner of the Form CD-450 should reflect the amount, both Federal and non-Federal that is currently available for obligation. For example, a multi-year award with a total three (3) year budget of $3,900,000 (three equal annual increments of $1,000,000 as the Federal share of cost and $300,000 as the recipient share of cost) will show the portion of Federal funding that is currently available for obligation ($1,000,000) and at least the corresponding portion of the non-Federal amount.

b. The project period should reflect the entire multi-year period during which Federal sponsorship begins and ends.

c. In order to make it clear that future support is anticipated, the following shall be included in the special award conditions:

The project period and budget(s) incorporated into this award cover a ____-year period for a total amount of $_____ in Federal funds. However, Federal funding available at this time is limited to $_____ for this funding period. Receipt of any prospective funding is contingent upon the availability of funds from Congress, satisfactory performance, continued relevance to program objectives and will be at the sole discretion of the Department of Commerce. The Department of Commerce is not liable for any obligations, expenditures, or commitments which involve any amount in excess of the Federal amount presently available. The recipient will be responsible for any and all termination costs it may incur should prospective funding not become available. No legal liability will exist or result on the part of the Federal Government for payment of any portion of the remaining funds which have not been made available under the award. Notifications affecting funding or notice of non-availability of additional funding for prospective years will be made only by the Grants Officer. The amendment to obligate prospective funding available shall be made on Form CD-451 (Amendment to Financial Assistance Award) if at all possible prior to the expiration of each year's activities.

The project period for this action is _____ through _____.
The funding period for this action is _____ through _____. [generally first year]
The funding period for this action may be extended through _____.

[**NOTE:** Funds are available for obligation from the beginning of the award through the end of the funding period. With each year's amendment to add funds, the funding period is EXTENDED from the date of award, so that by the last year of the award, for example, the 5-year project period equals the 5-year funding period.]

2. An itemized budget must be incorporated into the award which includes the Federal and non-Federal share of funding that is <u>currently</u> available.

E. Preparation of Amendment(s)

Following are instructions for the preparation of amendments for awards with multi-year funding.

1. As prospective funding becomes available for extended funding periods, the Grants Officer shall notify the recipient by using the Form CD-451 (Amendment to Financial Assistance Award) of the obligation of prospective funding. This should be done prior to the expiration of the current approved funding period.

2. The Form CD-451 should be prepared as follows:

a. The amendment provides $_____ in Federal funds for the continued funding of this multi-year award for a total of $_____. The amount to be entered into the "Previous Estimated Cost" column should be the aggregate amount that has been obligated under the award. The amount to be entered into the "Add" column is the amount which is being obligated with this action. In addition, the following terms shall be included in the special award conditions:

This amendment provides $ _____in Federal funding for the continued funding of this multi-year award for a total of $ _____. Any commitments, obligations, or expenditures in excess of that amount of Federal funds will be made at the recipient's risk. The funding period for this amendment is extended through (date). Future funding is contingent upon the availability of funds, satisfactory performance on the current and/or previous award, continued relevance to program objectives, and is at the sole discretion of the Department of Commerce.

b. Work to be performed with this funding should correspond to that identified in the original application and proposal, with any approved revisions. The original application, proposal, and any approved revisions will be incorporated into the award by reference in this amendment.

3. If the work to be performed with the prospective funding does not correspond to that identified in the original application, along with the proposal and any approved revisions, the recipient should submit a request for approval of any revisions to the last approved budget and work to be performed. This request should be submitted to the Program Officer for approval by the Grants Officer. It should be noted that any revision to the work to be performed should not change the basic scope of work originally approved. Changes to the approved scope of work must be incorporated into an award by the Grants Officer in a formal amendment.

4. In the event that funding does not become available or the determination is made not to provide additional funding for prospective year's activities, the Grants Officer shall notify the recipient in writing prior to the expiration of the current funding period.

5. While the Department reserves the right not to provide all or a portion of a prospective year's funding, every effort should be made to minimize changes to the originally approved funding levels.

a. If funding levels increase over the amount stipulated in the special award condition(s), the recipient must submit a supplemental application for the amount of the increase along with a new budget and required certifications. [**Caution: A significant increase in funding may lead to an unauthorized change in the scope of work.**]

b. If funding levels are significantly decreased, the recipient must submit a request for budget revision to the Program Officer. **[Caution: A significant decrease in funding could lead to an unauthorized change in the scope of work.]** The Program Officer will review the request and make written notification to the Grants Officer who will notify the recipient of the Department's approval or disapproval. If the Grants Officer approves the revised (decreased) budget, the Form CD-451 shall be issued.