

NEW YORK SUPERSTORM SANDY
FISHERY DISASTER RELIEF PROGRAM
SUBRECIPIENT AGREEMENT

THIS NEW YORK SUPERSTORM SANDY FISHERY DISASTER RELIEF PROGRAM SUBRECIPIENT AGREEMENT (“Agreement”) is made effective as of the day of September, 2015 (“Effective Date”) by and between the Housing Trust Fund Corporation (“Grantee” or “HTFC”) and The Research Foundation for the State University of New York as fiscal administrator on behalf of the New York State Small Business Development Center (“SBDC”) Network, which is comprised of entities at SUNY System Administration, SUNY Stony Brook, SUNY Farmingdale and Staten Island Community College (collectively referred to here in as the “Subrecipient”). The foregoing Grantee and Subrecipient shall sometimes be referred to herein individually as a “Party” and collectively as the “Parties.”

WHEREAS, in the aftermath of Hurricane Sandy, the United States Congress passed the Disaster Relief Appropriations Act, 2013 (Public Law 113-2, approved January 29, 2013), as amended (the “Act”), appropriating \$5 million to the U. S. Department of Commerce, National Oceanic and Atmospheric Administration (“NOAA”) for necessary expenses related to fishery disasters during calendar year 2012 that were declared by the Secretary of Commerce as a direct result of impacts from Hurricane Sandy, subject to the Federal statutes and regulations governing NOAA grants, as modified by exceptions and waivers previously granted and which may hereafter be granted by NOAA; and

WHEREAS, on November 16, 2012, Acting Secretary of Commerce Rebecca M. Blank determined pursuant to section 308(d) of the Interjurisdictional Fisheries Act that a fishery resource disaster occurred, and pursuant to section 315 of the Magnuson-Stevens Fishery Conservation and Management Act that a catastrophic regional fishery disaster occurred due to a natural disaster for New Jersey and New York as a result of Hurricane Sandy; and

WHEREAS, Governor Andrew M. Cuomo established the Governor’s Office of Storm Recovery (“GOSR”) within HTFC and tasked it with administering the State’s Hurricane Sandy recovery program; and

WHEREAS, pursuant to Award Number NA14NMF4830100, HTFC has received a grant from NOAA under the Act and 16 U.S.C. § 1881a(d) in the amount of \$2,352,643.00; and

WHEREAS, the Grantee wishes to engage the services of the Subrecipient to assist the Grantee in administering a grant program to provide assistance to the State of New York’s fishing industry in recovering from Hurricane Sandy;

NOW THEREFORE, the Parties agree that the Grant Funds (as defined herein) will be administered in accordance with the following terms and conditions:

I. SUBRECIPIENT PROGRAM

Subrecipient will be responsible for performing the activities detailed as set forth in Exhibit A, which may be amended from time to time, and is attached hereto and made part hereof. As a reimbursement-based program, tasks and deliverables contained in Exhibit A must be conducted in a manner satisfactory to Grantee and in compliance with applicable federal and state requirements, laws, and regulations. Grantee will monitor the performance of the Subrecipient and any contractors against goals and performance standards as stated in Exhibit A. The Subrecipient and any contractors must perform (and document to Grantee) the entire scope of Exhibit A. Substandard performance as reasonably determined by Grantee, in its sole discretion, will constitute noncompliance with this Agreement if the Subrecipient fails to take corrective action within a reasonable period of time (as determined by Grantee). If the Subrecipient does not take action to correct such substandard performance within a reasonable period of time (as determined by Grantee) after being notified by Grantee in writing, Grantee may initiate contract suspension or termination procedures or other actions as permitted under applicable law. Nothing in this Agreement shall waive or otherwise limit the actions Grantee may take or the remedies Grantee may seek as a result of any noncompliance by the Subrecipient.

II. TERM

The period of performance for all activities (with the exception of those activities required for the close out and final audit) as stated pursuant to this Agreement shall commence as of the date the Agreement is fully executed by the Parties and shall end on June 30, 2016 unless otherwise mutually agreed to by the Parties in writing.

III. BUDGET

A detailed budget breakdown is included as part of this Agreement as Exhibit B. Changes to this budget are permitted as per OMB Circular A-21 which permits Subrecipient-approved changes between approved budget line-items that are within 10% of the total approved budget amount. Any changes to the overall Grant Fund amount must be approved in writing by Grantee before such changes are allowed and reimbursable.

IV. NOAA GRANT FUNDS

It is expressly agreed and understood that the total amount to be paid by Grantee under this Agreement shall not exceed \$164,163.00 ("Grant Funds"). The amount of Grant Funds that Grantee has agreed to provide Subrecipient under this Agreement is expressly conditioned upon Grantee's receipt of such funds from NOAA. Grantee reserves the right to reduce the Grant Funds if funding from NOAA is not provided at the currently anticipated levels and/or if the actual costs for the approved activities are less than those set forth in the Budget.

In the event Subrecipient is awarded, granted, or provided with additional funds from any other source, which may include, in part or whole, as respects related to this Agreement, Subrecipient shall immediately notify Grantee of such funds, the amount, the source, and the conditions for their use. Subrecipient further agrees to provide any additional information Grantee requests related to such funds.

V. NOTICES

- a) All notices, requests, approvals, and consents of any kind made pursuant to this Agreement shall be in writing and shall be deemed to be effective as of the date sent by certified mail, return receipt requested. All notices and other written communications under this Agreement shall be addressed to the individuals in the capacities indicated below, unless otherwise modified by subsequent written notice. Communication and details concerning this Agreement shall be directed to the following representatives:

Grantee: Housing Trust Fund Corporation
25 Beaver Street
New York, New York 10004
Attn: Lisa Bova-Hiatt, Interim State Director of Storm Recovery

Subrecipient: Research Foundation for the State University of New York on behalf of the New York State Small Business Development Center Network
P.O. Box 9
Albany, New York 12201
Attn: Kathleen Barberis, Director of Contract & Grants

With a copy to: Empire State Development (ESD)
New York State Urban Development Corporation d/b/a
Empire State Development
633 Third Avenue
New York, New York 10017
Attn:

- b) Grantee will notify the Subrecipient by email when one of Grantee's consultants assigned to any project covered by this Agreement has been removed or terminated for any reason. Notices under this paragraph shall be sent to the following representatives:

Subrecipient: Research Foundation for the State University of New York on behalf of the New York State Small Business Development Center Network
P.O. Box 9
Albany, New York 12201
Attn: Kathleen Barberis, Director of Contracts & Grants

Notwithstanding any other provision herein, the above requirement to provide ESD with a copy of any notice or other written communications under this Agreement shall have no effect on any obligation of either Party under this Agreement, including, without limitation, any time period or deadline triggered by delivery of any such notice or written communication.

VI. GENERAL CONDITIONS

A. Compliance

The Subrecipient agrees to comply with the applicable requirements of the grant documents set forth in Exhibit C, which may be amended from time to time, and is attached hereto and made part hereof.

The Parties expressly acknowledge and agree that, as an institution of higher education, the Subrecipient shall comply with the requirements of (i) 15 CFR Part 14 (2014), Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, Other Non-Profit, and Commercial Organizations, rather than 15 CFR Part 24, Uniform Administrative Requirements for Grants and Agreements to States and Local Governments; and (ii) OMB Circular A-21, Cost Principles for Educational Institutions, rather than OMB Circular A-87, Cost Principles for State, Local, and Indian Tribal Governments.

The Subrecipient also agrees to comply with all other applicable Federal, State, local laws, regulations, Federal Register notices, policies, and guidelines, whether existing or to be established, provided the same are applied to activities occurring after the date the law, regulation, Federal Register notice, policy, or guideline was established or made effective, governing the Grant Funds provided under this Agreement. Grantee will use best efforts to provide the Subrecipient with applicable NOAA regulations, notices, policies, or guidance enacted, published, or otherwise established subsequent to the execution of this Agreement or not otherwise addressed herein.

In the event a conflict arises between the provisions of this Agreement and any of the foregoing, the Federal, State, and local laws, regulations, Federal Register notices, policies, and guidelines shall control and this Agreement shall be interpreted in a manner so as to allow for the terms contained herein to remain valid and consistent with such Federal, State, and local laws, regulations, Federal Register notices, policies, and guidelines.

B. Workers' Compensation

The Subrecipient shall provide Workers' Compensation Insurance for all of its employees as required by the State Workers' Compensation Law through such retained funds. The Subrecipient will require that its subrecipients and contractors procure and maintain appropriate Worker's Compensation and Disability Benefits coverage as required by law.

C. Insurance & Bonding

Subrecipient shall carry sufficient insurance coverage and bonding from insurers licensed to conduct business in New York State to protect all contract assets from loss due to any cause, including but not limited to, theft, fraud, and/or physical damage, and as a minimum shall purchase a blanket fidelity bond covering all employees in an amount equal to cash advances from Grantee. Grantee and the State of New York shall be named as an additional insured on all such insurance and shall meet all other insurance requirements as Grantee may impose from time to time. In addition, all insurance carriers and bonding companies shall meet minimum size and financial stability/financial rating requirements as may be imposed by

Grantee from time to time. Certificates of insurance shall be provided to Grantee and full and complete copies of the policies and/or bonds shall be provided to Grantee upon its request for the same.

D. Amendments

This Agreement may be amended provided that such amendments make specific reference to this Agreement, comply with programmatic policies, procedures, and guidelines, are executed in writing and signed by a duly authorized representative of each Party. Such amendments shall not invalidate this Agreement, nor relieve or release the Parties from their obligations under this Agreement. The Parties may amend this Agreement to conform with applicable Federal, State, or local governmental guidelines, policies, and available funding amounts, or for other reasons. If such amendments result in a change in the Grant Funds or Exhibit A, such modifications will be incorporated in a written amendment signed by the Parties.

E. Suspension or Termination

Grantee may suspend or terminate this Agreement if the Subrecipient materially fails to comply with any material term of this Agreement, which includes (but is not limited to) the following:

1. Failure to comply with any of the rules, regulations, or provisions referred to herein, or such statutes, regulations, executive orders, guidelines, policies, or directives as may become applicable at any time;
2. Failure, for any reason except those beyond the Subrecipient's control, as applicable, of the Subrecipient to fulfill in a timely and proper manner its obligations under this Agreement;
3. Ineffective or improper use of funds provided under this Agreement; or
4. Submission by the Subrecipient, as applicable, to Grantee of reports that are untimely, incorrect, or incomplete in any material respect.

This Agreement may also be terminated for convenience by Grantee or the Subrecipient, in whole or in part, by setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated.

VII. ADMINISTRATIVE REQUIREMENTS

A. Administration

The Subrecipient shall administer its obligations under the Agreement in conformance with the applicable requirements of Exhibit C.

B. Documentation and Record Keeping

1. Records to Be Maintained

The Subrecipient shall maintain all records required by applicable law to be maintained, as well as any additional records required by Grantee.

2. Retention

The Subrecipient shall retain all financial records, supporting documents, statistical records, and all other records pertinent to the Agreement for a period of five (5) years. The retention period begins on the date of the submission of Grantee's annual performance and evaluation report to NOAA in which the activities assisted under the Agreement are reported on for the final time. Notwithstanding the above, if there is litigation, claims, audits, negotiations, or other actions that involve any of the records cited and that have started before the expiration of the five-year period, then all such records must be retained until completion of the actions and resolution of all issues, or the expiration of the five-year period, whichever occurs later.

3. Data

The Subrecipient may be required to collect applicant data in the geographic vicinity of the work pursuant to Exhibit A. Such data may include, but is not limited to, name, racial, ethnic, and gender characteristics, address, income level or other basis for determining eligibility, and description of service provided. Such information shall be made available to cognizant federal authorities, Grantee monitors, or their designees for review upon request.

4. Disclosure

The Subrecipient understands that data collected under this Agreement is private and the use or disclosure of such information, when not directly connected with the administration of the Parties' responsibilities with respect to efforts provided under this Agreement are subject to the provisions of Article 6-A, "Personal Privacy Protection Law", of the New York State Public Officers Law, as well as all other applicable State and Federal privacy laws (e.g., the Federal Privacy Act, 5 U.S.C. § 552a).

5. Close-out

The Subrecipient's obligations to Grantee shall not end until all close-out requirements are completed. Close-out activities and requirements are subject to the applicable requirements of Exhibit C. Notwithstanding the foregoing, the terms of this Agreement shall remain in effect during any period that the Subrecipient has control over NOAA grant funds, including Program Income (as that term is defined in 15 CFR §§ 14.2(aa) and 24).

6. Audits & Inspections

All Subrecipient records with respect to any matters covered by this Agreement shall be made available to Grantee, NOAA, and the Comptroller General of the United States, or any of their authorized representatives, at any time during normal business hours, as often as deemed necessary, to audit, examine, and make excerpts or transcripts of all relevant

data. Any deficiencies noted in audit reports must be fully cleared by the Subrecipient within 30 days after receipt by the Subrecipient. Failure of the Subrecipient to comply with the above audit requirements will constitute a violation of this Agreement and may result in the withholding of future payments and/or termination. The Subrecipient hereby agrees to have an annual Subrecipient audit conducted in accordance with OMB Circular A-133. All GOSR records with respect to any matters covered by this Agreement shall be made available to Subrecipient or other authorized State official.

C. Payment Procedures

1. Invoicing

Subrecipient shall invoice the Grantee on a monthly basis for services provided under this Agreement. Invoices shall contain a summary of charges by cost category. Upon receipt, Grantee shall pay invoice within 30 calendar days to Subrecipient. Detailed documentation on expenditure transactions shall be made available upon post-audit request.

2. Indirect Costs

The Indirect Cost Rate for this Agreement is 14% on a Modified Total Direct Cost (MTDC) basis as limited by the Grantee. The amount is represented in Exhibit B hereto.

VIII. SUBGRANTING AND CONTRACTING

The Subrecipient shall not enter into any agreements with any other entity or individual to assist in effectuating the activities of this Agreement without the express written consent of Grantee prior to the execution of such agreement.

IX. REPORTING OBLIGATIONS

In addition to deliverables and metrics specifically referenced in Exhibit A, Subrecipient shall submit regular Progress Reports to Grantee in the form, content, and frequency as reasonably required by Grantee.

X. ASSIGNMENT

The Subrecipient shall not assign or transfer any interest in this Agreement without the prior written consent of Grantee.

XI. SEVERABILITY

If any provision of this Agreement is held invalid, the remainder of the Agreement shall not be affected thereby and all other parts of this Agreement shall nevertheless be in full force and effect.

XII. SECTION HEADINGS AND SUBHEADINGS

The section headings and subheadings contained in this Agreement are included for convenience only and shall not limit or otherwise affect the terms of this Agreement.

XIII. WAIVER

Grantee's failure to act with respect to a breach by the Subrecipient does not waive its right to act with respect to subsequent or similar breaches. The failure of Grantee to exercise or enforce any right or provision shall not constitute a waiver of such right or provision.

XIV. CHOICE OF LAW

This Agreement shall be governed by and construed under the laws of the State of New York without giving effect to its conflict of law principles. Nothing in this Agreement shall preclude either Party from seeking injunctive relief to protect its rights under this Agreement.

XV. COMPLIANCE WITH LAW

It is the intention and understanding of the Parties hereto that each and every provision of law required to be inserted in this Agreement should be and is inserted herein. Furthermore, it is hereby stipulated that every such provision is deemed to be inserted and if, through mistake or otherwise, any such provision is not inserted herein or is not inserted in correct form, then this Agreement shall forthwith, upon the application of any Party, be amended by such insertion so as to comply strictly with the law and without prejudice to the rights of any Party.

XVI. SUBROGATION

The Subrecipient acknowledges that funds provided through this Agreement are Federal funds administered by NOAA and that all funds provided by this Agreement are subject to audit, disallowance, and repayment. Any disagreement with adverse findings may be challenged and subject to Federal regulation; however, the Subrecipient shall promptly return any and all funds to Grantee, which are found to be ineligible, unallowable, unreasonable, a duplication of benefits, or non-compensable, no matter the cause. This clause shall survive indefinitely the termination of this Agreement for any reason.

XVII. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the Parties for the use of funds received under this Agreement and it supersedes all prior or contemporaneous communications and proposals, whether electronic, oral, or written between the Parties with respect to this Agreement.

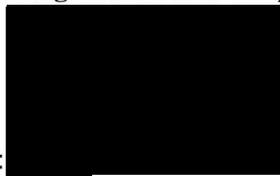
IN WITNESS WHEREOF, this Agreement has been executed by a duly authorized representative of the parties.

The Research Foundation for the



Name: Kathleen Barberis
Title: Director of Contracts & Grants

Housing Trust Fund Corporation



By: _____
Title: ~~Director~~, Governor's Office of DAN LELAND GREENE
GENERAL COUNSEL
Farm Recovery, Interim

**New York State Small Business
Development Center Network**



By: _____
Name: James L. King
Title: State Director – NYSBDC

This Agreement has been approved by Grantee's Counsel as to form and its Treasurer as to fiscal sufficiency.

EXHIBIT A

Subrecipient Program Description

Scope of Work

The Governor's Office of Storm Recovery ("GOSR"), established within the Housing Trust Fund Corporation ("HTFC") by Governor Andrew M. Cuomo, is tasked with administering the Grant Funds.

Background

U.S. Small Business Administration (SBA)

The U.S. Small Business Administration (SBA) was created in 1953 as an independent agency of the federal government to aid, counsel, assist and protect the interests of small business concerns, to preserve free competitive enterprise and to maintain and strengthen the overall economy of our nation. We recognize that small business is critical to our economic recovery and strength, to building America's future, and to helping the United States compete in today's global marketplace. Although SBA has grown and evolved in the years since it was established in 1953, the bottom line mission remains the same. The SBA helps Americans start, build and grow businesses. Through an extensive network of field offices and partnerships with public and private organizations, SBA delivers its services to people throughout the United States, Puerto Rico, the U. S. Virgin Islands and Guam.

Small Business Development Centers (SBDCs)

Small Business Development Centers (SBDCs) provide assistance to small businesses and aspiring entrepreneurs throughout the United States and its territories. SBDCs help entrepreneurs realize the dream of business ownership and help existing businesses remain competitive in a complex, ever-changing global marketplace. SBDCs are hosted by leading universities and state economic development agencies, and funded in part through a partnership with SBA.

SBDC advisors provide aspiring and current small business owners a variety of free business consulting and low-cost training services including: business plan development, manufacturing assistance, financial packaging and lending assistance, exporting and importing support, disaster recovery assistance, procurement and contracting aid, market research help, 8(a) program support, and healthcare guidance.

Work to be Accomplished

To assist the State's commercial and recreational fishing industries to recover from the impacts of Superstorm Sandy, GOSR, will collaborate with the New York State Department of Environmental Conservation (DEC) to customize a Recreational and Commercial fishery direct financial-assistance program using the National Oceanic Atmospheric Administration and National Marine and Wildlife Services (NOAA and NMFS) funds. Such funds will be available to individuals and businesses of New York's recreational and commercial fishing industries, which have disaster related recovery expenses and business loss as a result of Superstorm Sandy.

As a result of their access to New York's fishing community, DEC will have a critical role in finalizing the eligibility and application criteria of the program and will assist in coordinating outreach events and disseminating information to the fishing community. GOSR will collaborate with DEC staff over several months to properly customize the program to include information gathered by DEC about the unmet needs of New York's fishing industries.

Once the details of the New York Sandy Disaster Grants Program are finalized, GOSR, the DEC and the SBDCs will conduct outreach to inform potential applicants in affected communities of the new program. "Fishery Assistance" events would be held across the marine district of New York. In addition, contracted administrative support staff would be enlisted to assist applicants with submission and review of paperwork if they miss an event in their area. It is GOSR and DEC's intention to provide assistance to every applicant that files a complete application by the application deadline and can appropriately meet the eligibility and proof of loss/damage criteria. The final amount the applicants will receive will depend on the final award amount, final administration costs and the finalized distribution plan.

Program Description

- A. SBDC staff will be dedicated to tasks identified in the NOAA Fisheries Sandy Disaster Grants Program. Specific deliverables will include, but are not limited to:
 1. Application receipt and review for initial determination of eligibility into the grant program; Subrecipient shall provide all application intake services and all direct communication with business applicants to the New York Superstorm Sandy Fishery Disaster Relief Program, as requested and detailed by the Grantee and/or DEC;
 2. Request and ensure all supporting documentation meets eligibility requirements; Subrecipient shall develop and maintain applicant files in a standardized and consistent method for the Program, as requested and detailed by the Grantee and/or DEC;
 3. Assist applicants with application inquiries and submission, including phone and on-site program support; Subrecipient shall provide application eligibility recommendations to

the State based on the results of their application review and approved Program Policies and Procedures;

4. Subrecipient shall perform a quality control analysis and review of the applicant files prior to submitting an application package to the Grantee for underwriting review;
5. Subrecipient shall issue correspondence to applicants and/or recipients, on behalf of the Grantee and/or DEC as requested by Grantee and/or DEC;
6. Subrecipient shall present and oversee the execution of the grant agreement with awarded business applicants;
7. Subrecipient shall process any application appeals, clarifications, revisions applicants from the Program, as requested and detailed by the Grantee and/or DEC;
8. Subrecipient shall close-out applicants from the Program, as requested and detailed by the Grantee and/or DEC;
9. Subrecipient shall complete direct outreach, provide informational workshops and facilitate engagements for potential and existing applicants as requested and/or previously approved by the Grantee and/or DEC;
10. Unless otherwise agreed upon in writing by the Grantee and the Subrecipient, on a weekly basis Subrecipient shall make all reasonable efforts to implement and deliver the following, as directed by the Grantee:
 - a. Subrecipient will submit twenty-five (25) completed applications for final review to the Grantee;
 - b. Subrecipient will review thirty (30) applications for quality assurance; and
 - c. Subrecipient will follow-up with applicants in the application queue so as to move such applicants into "Face Value" status or make an eligibility recommendation to the Grantee, as applicable.
11. Unless otherwise agreed upon in writing by the Grantee and the Subrecipient, the Subrecipient shall make all reasonable efforts to implement and deliver on the following Program goals:
 - a. Subrecipient will prioritize and process all responsive Preliminary Award Initiative recipients through the full award Program, as per the Program Policies and Procedures;
 - b. Subrecipient will prioritize responsive applicants pending in the Program queue for longer than six (6) months;
 - c. Subrecipient will meet with new Program applicants within two (2) weeks of initial application; and

- d. Subrecipient will implement the process of following-up on outstanding documentation requests and for contacting non-responsive applicants, as provided in the Program Policies and Procedures, and recommend a status determination of all non-responsive applicants.
12. Subrecipient shall complete the Anti-Fraud Waste and Abuse (AFWA) check for each application; and
13. Review application appeals on a rolling basis.

EXHIBIT B - BUDGET

New York Small Business Development Center					
PROPOSED NOAA OPERATING BUDGET					
LOCATION:	SBDC NOAA Award			INDIRECT RATE:	14.0%
		Indirect Type:	MTDC		
CATEGORY & SUB ITEMS	SBA FUNDS	CAMPUS MATCH		STATE MATCH	TOTAL
		Cash	In-Kind		
TOTAL DIRECT	\$144,003	\$0	\$0	\$0	\$144,003
CAMPUS INDIRECT	\$20,160	\$0	\$0	\$0	\$20,160
TOTALS	\$164,163	\$0	\$0	\$0	\$164,163

NOTES:

- PERSONNEL Salary & Wages for a part-time Project Coordinator on Long Island.
- TRAVEL for several meetings with groups of applicants, meetings with GOSR for any training and follow-up and any individual applicant meetings in the field.
- EQUIPMENT for three Advisor dedicated laptops for applicant assistance, presentations to groups of applicants and storage of guideline documentation that can be taken to the field.
- SUPPLIES for print materials, thumb drive storage devices that can be given to the applicants, any hard-copy mailing costs, etc.
- CONTRACTUAL for costs associated with the support person to provide verification and review of applications prior to transfer to GOSR.
- SUBAWARDS for personnel, OTPS and indirect costs at our SUNY Stony Brook, SUNY Farmingdale and Staten Island Community College SBDC Network centers.
- OTHER for unanticipated minor costs such as meeting rooms and/or specialized needs (language translations, handicap or challenged applicant accommodations, etc).

REGIONAL CENTER BUDGET NOTES

PERSONNEL & FRINGE: (IDENTIFY BY NAME OR TITLE & SOURCE OF FUNDING)

TITLE	NOAA FUNDS		FRINGE RATE	TOTAL FRINGE	COUNS. I.D. or Initials	Program EFFORT	FTE
	\$0		0.00%	\$0		0%	-
	\$0		0.00%	\$0		0%	-
	\$0		0.00%	\$0		0%	-
	\$0		0.00%	\$0		0%	-
	\$0		0.00%	\$0		0%	-
	\$0		0.00%	\$0		0%	-
	\$0		0.00%	\$0		0%	-
	\$0		0.00%	\$0		0%	-
	\$0		0.00%	\$0		0%	-
	\$0		0.00%	\$0		0%	-
	\$0		0.00%	\$0		0%	-
	\$0		0.00%	\$0		0%	-
	\$0		0.00%	\$0		0%	-
	\$0		0.00%	\$0		0%	-
	\$0		0.00%	\$0		0%	-
	\$0		0.00%	\$0		0%	-
	\$0		0.00%	\$0		0%	-
	\$0		0.00%	\$0		0%	-
	\$0		0.00%	\$0		0%	-
	\$0		0.00%	\$0		0%	-
	\$0		0.00%	\$0		0%	-
TOTAL	73,113			31,095			1.19

EQUIPMENT CONTROL: (IDENTIFY BY ITEM TYPE, COST AND FUNDING SOURCE)					
				CAMPUS	STATE
ITEM			NOAA	CASH	MATCH
3 laptops for Advisors to visit applicants for assistance			\$2,100		
		TOTAL	\$2,100	\$0	\$0

EXHIBIT C

(see attached)

Exhibit C

U. S. DEPARTMENT OF COMMERCE

GRANT COOPERATIVE AGREEMENT

FINANCIAL ASSISTANCE AWARD

AWARD NUMBER
NA14NMF4830100

RECIPIENT NAME HOUSING TRUST FUND CORPORATION

STREET ADDRESS 38-40 State Street	FEDERAL SHARE OF COST \$2,352,643.00
--	---

CITY, STATE, ZIP CODE Albany NY 12207-2837	RECIPIENT SHARE OF COST \$0.00
---	-----------------------------------

AWARD PERIOD 07/01/2014-06/30/2016	TOTAL ESTIMATED COST \$2,352,643.00
---	--

AUTHORITY 16 USC 1881(a)(d) MSA 312
Disaster Relief Appropriations Act of 2013, Public Law 113-2

CFDA NO. AND PROJECT TITLE
11.483 New York's Sandy-impacted Fishery Grant Relief Program

This award offer approved by the Grants Officer constitutes an obligation of Federal funding. By accepting this award offer, the Recipient agrees to comply with the award Terms and Conditions checked below. If this was a paper issued award offer, please send two signed documents to the Grants Officer and retain one set of signed award documents for your files. If this award offer is not accepted without modification within 30 days of receipt, the Grants Officer may unilaterally withdraw this award offer and de-obligate the funds.

- Department of Commerce Financial Assistance Standard Terms and Conditions
- Government Wide Research Terms and Conditions
- Bureau Specific Administrative Standard Award Conditions
- Award Specific Special Award Conditions
- Line Item Budget
- 15 CFR Part 14, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, Other Non-Profit, and Commercial Organizations
- 15 CFR Part 24, Uniform Administrative Requirements for Grants and Agreements to States and Local Governments
- OMB Circular A-21, Cost Principles for Educational Institutions
- OMB Circular A-87, Cost Principles for State, Local, and Indian Tribal Governments
- OMB Circular A-122, Cost Principles for Non-Profit Organizations
- 48 CFR Part 31, Contract Cost Principles and Procedures
- OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations
- Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements
REF: 77 FR 74634 (December 17, 2012)
- Other(s)

SIGNATURE OF DEPARTMENT OF COMMERCE GRANTS OFFICER Stacy Tedder	TITLE Grants Officer	DATE 07/21/2014
TYPE NAME AND SIGNATURE OF AUTHORIZED RECIPIENT OFFICIAL Robert Miller	TITLE	DATE 09/12/2014

DEPARTMENT OF COMMERCE
FINANCIAL ASSISTANCE
STANDARD TERMS AND CONDITIONS



January 2013

DEPARTMENT OF COMMERCE
FINANCIAL ASSISTANCE STANDARD TERMS AND CONDITIONS

Table of Contents

PREFACE	4
A. FINANCIAL REQUIREMENTS.....	4
.01 Financial Reports	4
.02 Award Payments	4
.03 Federal and Non-Federal Sharing	5
.04 Budget Changes and Transfer of Funds among Categories.....	6
.05 Indirect Costs and Facilities and Administrative Costs	6
.06 Incurring Costs or Obligating Federal Funds beyond the Expiration Date	9
.07 Tax Refunds.....	9
B. PROGRAMMATIC REQUIREMENTS	9
.01 Performance (Technical) Reports	9
.02 Unsatisfactory Performance.....	10
.03 Programmatic Changes	10
.04 Other Federal Awards with Similar Programmatic Activities.....	10
.05 Non-Compliance with Award Provisions	10
.06 Prohibition against Assignment by the Recipient.....	10
.07 Disclaimer Provisions	11
C. NON-DISCRIMINATION REQUIREMENTS.....	11
.01 Statutory Provisions.....	11
.02 Other Provisions.....	12
.03 Title VII Exemption for Religious Organizations	13
D. AUDITS	13
.01 Organization-Wide, Program-Specific, and Project Audits.....	13
.02 Audit Resolution Process.....	14
E. DEBTS	15
.01 Payment of Debts Owed the Federal Government	15
.02 Late Payment Charges	16
.03 Barring Delinquent Federal Debtors from Obtaining Federal Loans or Loan Insurance Guarantees.....	16

.04	Effect of Judgment Lien on Eligibility for Federal Grants, Loans, or Programs.....	16
F.	GOVERNMENTWIDE DEBARMENT AND SUSPENSION.....	16
G.	DRUG-FREE WORKPLACE.....	17
H.	LOBBYING RESTRICTIONS.....	17
.01	Statutory Provisions.....	17
.02	Disclosure of Lobbying Activities.....	17
I.	CODES OF CONDUCT AND SUBAWARD, CONTRACT, AND SUBCONTRACT PROVISIONS.....	17
.01	Code of Conduct for Recipients.....	17
.02	Applicability of Award Provisions to Subrecipients.....	18
.03	Competition and Codes of Conduct for Subawards.....	18
.04	Applicability of Provisions to Subawards, Contracts, and Subcontracts.....	19
.05	Small Businesses, Minority Business Enterprises and Women’s Business Enterprises	20
.06	Subaward and/or Contract to a Federal Agency.....	20
J.	PROPERTY.....	20
.01	Standards.....	20
.02	Real and Personal Property.....	21
K.	ENVIRONMENTAL REQUIREMENTS.....	21
.01	The National Environmental Policy Act (42 U.S.C. § 4321 <i>et seq.</i>).....	22
.02	National Historic Preservation Act (16 U.S.C. § 470 <i>et seq.</i>).....	22
.03	Executive Order 11988 (“Floodplain Management”) and Executive Order 11990 (“Protection of Wetlands”).....	23
.04	Clean Air Act (42 U.S.C. § 7401 <i>et seq.</i>), Federal Water Pollution Control Act (33 U.S.C. § 1251 <i>et seq.</i>) (Clean Water Act), and Executive Order 11738 (“Providing for administration of the Clean Air Act and the Federal Water Pollution Control Act with respect to Federal contracts, grants or loans”).....	23
.05	The Flood Disaster Protection Act (42 U.S.C. § 4002 <i>et seq.</i>).....	23
.06	The Endangered Species Act (16 U.S.C. § 1531 <i>et seq.</i>).....	23
.07	The Coastal Zone Management Act (16 U.S.C. § 1451 <i>et seq.</i>).....	23
.08	The Coastal Barriers Resources Act (16 U.S.C. § 3501 <i>et seq.</i>).....	23
.09	The Wild and Scenic Rivers Act (16 U.S.C. § 1271 <i>et seq.</i>).....	23
.10	The Safe Drinking Water Act of 1974, as amended, (42 U.S.C. § 300f <i>et seq.</i>).....	24
.11	The Resource Conservation and Recovery Act (42 U.S.C. § 6901 <i>et seq.</i>).....	24

.12	The Comprehensive Environmental Response, Compensation, and Liability Act (Superfund) (42 U.S.C. § 9601 <i>et seq.</i>) and the Community Environmental Response Facilitation Act (41 U.S.C. § 11001 <i>et seq.</i>).....	24
.13	Executive Order 12898 (“Environmental Justice in Minority Populations and Low Income Populations”).....	24
L.	MISCELLANEOUS REQUIREMENTS.....	24
.01	Criminal and Prohibited Activities	24
.02	Foreign Travel.....	25
.03	American-Made Equipment and Products	26
.04	Intellectual Property Rights	26
.05	Increasing Seat Belt Use in the United States.....	28
.06	Research Involving Human Subjects	28
.07	Federal Employee Expenses	29
.08	Minority Serving Institutions Initiative	29
.09	Research Misconduct.....	29
.10	Publications, Videos and Acknowledgment of Sponsorship.....	30
.11	Care and Use of Live Vertebrate Animals.....	30
.12	Homeland Security Presidential Directive 12.....	31
.13	Compliance with Department of Commerce Bureau of Industry and Security Export Administration Regulations	32
.14	The Trafficking Victims Protection Act of 2000 (22 U.S.C. 7104(g)), as amended, and the implementing regulations at 2 C.F.R. part 175	33
.15	The Federal Funding Accountability and Transparency Act of 2006 (Pub. L. No. 109-282, 31 USCA § 6101 Note).....	35
.16	Federal Financial Assistance Planning During a Funding Hiatus or Government Shutdown	40
	APPENDIX A: Summary of Changes to the 2008 DOC Financial Assistance Standard Terms and Conditions.....	42

PREFACE

The recipient and any subrecipients must, in addition to the assurances made as part of the application, comply and require each of its contractors and subcontractors employed in the completion of the project to comply with all applicable statutes, regulations, executive orders (E.O.s), Office of Management and Budget (OMB) circulars, terms and conditions, and approved applications.

This award is subject to the laws and regulations of the United States. Any inconsistency or conflict in terms and conditions specified in the award will be resolved according to the following order of precedence: public laws, regulations, applicable notices published in the *Federal Register*, E.O.s, OMB circulars, Department of Commerce (DOC) Financial Assistance Standard Terms and Conditions, agency standard award conditions (if any), and special award conditions. Special award conditions may amend or take precedence over DOC standard terms and conditions, on a case-by-case basis, when allowed by the DOC standard term and condition.

Some of the DOC terms and conditions herein contain, by reference or substance, a summary of the pertinent statutes, or regulations published in the *Federal Register* or Code of Federal Regulations (C.F.R.), E.O.s, OMB circulars or the assurances (Forms SF-424B and SF- 424D). To the extent that it is a summary, such provision is not in derogation of, or an amendment to, any such statute, regulation, E.O., OMB circular, or assurance.

A. FINANCIAL REQUIREMENTS

.01 Financial Reports

- a. The recipient shall submit a “Federal Financial Report” (Form SF-425) on a semi-annual basis for the periods ending March 31 and September 30, or any portion thereof, unless otherwise specified in a special award condition. Reports are due no later than 30 days following the end of each reporting period. A final Form SF-425 shall be submitted within 90 days after the expiration of the project period.
- b. The reports must be submitted to the Grants Officer electronically, or in hard copy (no more than an original and two copies), in accordance with the award conditions.

.02 Award Payments

- a. Consistent with 15 C.F.R. §§ 14.22 and 24.21, the advance method of payment shall be authorized unless otherwise specified in a special award condition. The Grants Officer determines the appropriate method of payment. Payments will be made through electronic funds transfers directly to the recipient’s bank account and in accordance with the requirements of the Debt Collection Improvement Act of 1996 and the Cash Management Improvement Act. The DOC Award Number must be included on all payment-related correspondence, information, and forms.

- b. When the “Request for Advance or Reimbursement” (Form SF-270) is used to request payment, the recipient shall submit the request no more frequently than monthly, and advances shall be approved for periods to cover only expenses anticipated over the next 30 days. The recipient must complete Forms SF-3881, “ACH Vendor Miscellaneous Payment Enrollment Form,” and SF-270 and submit forms to the Grants Officer. Form SF-3881 enrollment must be completed before the first award payment can be made via a Form SF-270 request.
- c. Unless otherwise provided for in the award terms, payments under this award will be made using the Department of Treasury’s Automated Standard Application for Payment (ASAP) system. Under the ASAP system, payments are made through preauthorized electronic funds transfers, in accordance with the requirements of the Debt Collection Improvement Act of 1996. In order to receive payments under ASAP, recipients are required to enroll with the Department of Treasury, Financial Management Service, Regional Financial Centers, which allows them to use the on-line and Voice Response System (VRS) method of withdrawing funds from their ASAP established accounts. The following information will be required to make withdrawals under ASAP: (1) ASAP account number – the award number found on the cover sheet of the award; (2) Agency Location Code (ALC); and Region Code. Recipients enrolled in the ASAP system do not need to submit a “Request for Advance or Reimbursement” (Form SF-270), for payments relating to their award. Awards paid under the ASAP system will contain a special award condition, clause, or provision describing enrollment requirements and any controls or withdrawal limits set in the ASAP system.
- d. Advances shall be limited to the minimum amounts necessary to meet immediate disbursement needs, but in no case should advances exceed the amount of cash required for a 30-day period. Advanced funds not disbursed in a timely manner and any applicable interest must be promptly returned to DOC. If a recipient demonstrates an unwillingness or inability to establish procedures that will minimize the time elapsing between the transfer of funds and disbursement or if the recipient otherwise fails to continue to qualify for the advance method of payment, the Grants Officer may change the method of payment to reimbursement only.

.03 Federal and Non-Federal Sharing

- a. Awards that include Federal and non-Federal sharing incorporate a budget consisting of shared allowable costs. If actual allowable costs are less than the total approved budget, the Federal and non-Federal cost shares shall be calculated by applying the approved Federal and non-Federal cost share ratios to actual allowable costs. If actual allowable costs are greater than the total approved budget, the Federal share shall not exceed the total Federal dollar amount authorized by the award.
- b. The non-Federal share, whether in cash or in-kind, is to be paid out at the same general rate as the Federal share. Exceptions to this requirement may be granted by the Grants Officer based on sufficient documentation demonstrating previously determined plans for, or later commitment of, cash or in-kind contributions. In any case, the recipient must meet its cost share commitment over the life of the award. The recipient must create and maintain

sufficient records justifying all non-federal sharing requirements to facilitate questions and audits, see Section D, “Audits,” for audit requirements.

.04 Budget Changes and Transfer of Funds among Categories

- a. Requests for budget changes to the approved estimated budget in accordance with the provision noted below must be submitted to the Grants Officer who shall make the final determination on such requests and notify the recipient in writing.
- b. Transfers of funds by the recipient among direct cost categories are permitted for awards in which the Federal share of the project is \$100,000 or less. For awards in which the Federal share of the project exceeds \$100,000, transfers of funds among direct cost categories must be approved in writing by the Grants Officer when the cumulative amount of such direct costs transfers exceed 10 percent of the total Federal and non-Federal funds authorized by the Grants Officer. The 10 percent threshold applies to the total Federal and non-Federal funds authorized by the Grants Officer at the time of the transfer request. This is the accumulated amount of Federal funding obligated to date by the Grants Officer along with any non-Federal share. The same requirements apply to the cumulative amount of transfer of funds among programs, functions, and activities. Transfers will not be permitted if such transfers would cause any Federal appropriation, or part thereof, to be used for purposes other than those intended. This transfer authority does not authorize the recipient to create new budget categories within an approved budget unless the Grants Officer has provided prior approval. In addition, this does not prohibit the recipient from requesting Grants Officer approval for revisions to the budget. *See* 15 C.F.R. § 14.25 and 15 C.F.R. § 24.30 (as applicable) for specific requirements concerning budget revisions and transfer of funds between budget categories.
- c. The recipient is not authorized at any time to transfer amounts budgeted for direct costs to the indirect costs line item or vice versa, without written prior approval of the Grants Officer.

.05 Indirect Costs and Facilities and Administrative Costs

- a. Indirect costs, or facilities and administrative (F&A) costs for educational institutions, will not be allowable charges against an award unless permitted under the award and specifically included as a line item in the award’s approved budget.
- b. Excess indirect costs may not be used to offset unallowable direct costs.
- c. OMB established the cognizant agency concept, under which a single agency represents all others in dealing with grantees in common areas. The cognizant agency reviews and approves grantees’ indirect cost rates. Approved rates must be accepted by other agencies, unless specific program regulations restrict the recovery of indirect costs. If indirect costs are permitted and the recipient would like to include indirect costs in its budget, but the recipient has not previously established an indirect cost rate with a Federal agency, the

negotiation and approval of a rate is subject to the procedures in the applicable cost principles and the following subparagraphs:

1. (a) State, local, and Indian Tribal Governments; Educational Institutions; Hospitals and Non-Profit Organizations (Non-Commercial Organizations)
 - i. State and Local Governments: Department of Health and Human Services (HHS) serves as the cognizant agency for all States and most cities. For certain State agencies, cities and counties, OMB published a list of cognizant Federal agency assignments on January 6, 1986 (51 FR 552). The cognizant agency for governmental units or agencies not specifically identified by OMB will be determined based on the Federal agency providing the largest amount of Federal funds. *See* Subsection D.1.b. of Appendix E to 2 C.F.R. Part 225 (OMB Circular A-87);
 - ii. Indian Tribes: Department of the Interior serves as the cognizant agency for all Indian tribal governments. *See* Subsection D.1.c. of Appendix E to 2 C.F.R. Part 225 (OMB Circular A-87);
 - iii. Educational Institutions: Department of Health and Human Services or the Department of Defense's Office of Naval Research serves as the cognizant agency for educational institutions as determined in accordance with Subsection G.11. of Appendix A to 2 C.F.R. Part 220 (OMB Circular A-21);
 - iv. Non-Profit Organizations: Cognizant agency is determined by calculating which Federal agency provides the largest dollar amount of awards to the non-profit organization in accordance with Subsection E.2. of Appendix A to 2 C.F.R. Part 230 (OMB Circular A-122); and
 - v. Hospitals: Department of Health and Human Services serves as the main cognizant agency for hospitals. *See* Appendix E to 45 C.F.R. Part 74.

For those organizations for which DOC is cognizant or has oversight, DOC or its designee will either negotiate a fixed rate with carry-forward provisions for the recipient or, in some instances, will limit its review to evaluating the procedures described in the recipient's cost allocation plan. Indirect cost rates and cost allocation methodology reviews are subject to future audits to determine actual indirect costs.

(b) Commercial Organizations

For commercial organizations, the term "cognizant Federal agency" generally is defined as the agency that provides the largest dollar amount of negotiated contracts, including options. *See* 48 C.F.R. Part 42. If the only Federal funds received by a commercial organization are DOC award funds, then DOC becomes the cognizant Federal agency for the purpose of indirect cost negotiations. For those organizations for which DOC is cognizant, DOC or its designee will negotiate a fixed rate with carry-forward provisions for the recipient. Fixed rate means an indirect cost rate that has the same characteristics as a pre-determined rate, except that the difference between the estimated costs and the

actual costs of the period covered by the rate is carried forward as an adjustment to the rate computation of the subsequent period.

DOC or its designee will negotiate indirect cost rates using the cost principles found in 48 C.F.R. Part 31, "Contract Cost Principles and Procedures." For guidance on how to put an indirect cost plan together go to:

<http://www.dol.gov/oasam/programs/boc/costdeterminationguide/main.htm>

2. Within 90 days of the award start date the recipient shall submit to the address listed below documentation (indirect cost proposal, cost allocation plan, etc.) necessary to perform the review. The recipient shall provide the Grants Officer with a copy of the transmittal letter.

Office of Acquisition Management
U.S. Department of Commerce
14th Street and Constitution Avenue, N.W., Room 6412
Washington, DC 20230

3. The recipient can use the fixed rate proposed in the indirect cost plan until such time as the DOC provides a response to the submitted plan. Actual indirect costs must be calculated annually and adjustments made through the carry-forward provision used in calculating next year's rate. This calculation of actual indirect costs and the carry-forward provision is subject to audit. Indirect cost rate proposals must be submitted annually. Organizations that have previously established indirect cost rates must submit a new indirect cost proposal to the cognizant agency within six months after the close of each of the recipients' fiscal years.
- d. When DOC is not the oversight or cognizant Federal agency, the recipient shall provide the Grants Officer with a copy of a negotiated rate agreement or a copy of the transmittal letter submitted to the cognizant or oversight Federal agency requesting a negotiated rate agreement.
- e. If the recipient fails to submit the required documentation to DOC within 90 days of the award start date, the Grants Officer may amend the award to preclude the recovery of any indirect costs under the award. If the DOC, oversight, or cognizant Federal agency determines there is a finding of good and sufficient cause to excuse the recipient's delay in submitting the documentation, an extension of the 90-day due date may be approved by the Grants Officer.
- f. The maximum dollar amount of allocable indirect costs for which DOC will reimburse the recipient shall be the lesser of:

1. The line item amount for the Federal share of indirect costs contained in the approved award budget, including all budget revisions approved in writing by the Grants Officer; or
2. The Federal share of the total indirect costs allocable to the award based on the indirect cost rate approved by a cognizant or oversight Federal Agency and applicable to the period in which the cost was occurred, provided that the rate is approved on or before the award end date.

.06 Incurring Costs or Obligating Federal Funds beyond the Expiration Date

- a. The recipient shall not incur costs or obligate funds for any purpose pertaining to the operation of the project, program, or activities beyond the project period, which is the period established in the award document during which Federal sponsorship begins and ends. *See, e.g., 15 C.F.R. § 14.2(cc).* The only costs which are authorized for a period of up to 90 days following the end of the project period are those strictly associated with close-out activities. Close-out activities are normally limited to the preparation of final progress, financial, and required project audit reports unless otherwise approved in writing by the Grants Officer. The Grants Officer may approve extensions of the 90-day closeout period upon a request by the recipient as provided in 15 C.F.R. §§ 14.71 and 24.50.
- b. Unless otherwise authorized in 15 C.F.R. § 14.25(e)(2) or a special award condition, any extension of the project period can only be authorized by the Grants Officer in writing. Verbal or written assurances of funding from anyone other than the Grants Officer shall not constitute authority to obligate funds for programmatic activities beyond the end of the project period.
- c. The DOC has no obligation to provide any additional prospective funding. Any amendment of the award to increase funding and to extend the project period is at the sole discretion of DOC.

.07 Tax Refunds

Refunds of Federal Insurance Contributions Act (FICA) or Federal Unemployment Tax Act (FUTA) taxes received by the recipient during or after the project period must be refunded or credited to DOC where the benefits were financed with Federal funds under the award. The recipient agrees to contact the Grants Officer immediately upon receipt of these refunds. The recipient further agrees to refund portions of FICA/FUTA taxes determined to belong to the Federal Government, including refunds received after the project period ends.

B. PROGRAMMATIC REQUIREMENTS

.01 Performance (Technical) Reports

- a. The recipient shall submit performance (technical) reports electronically or in hard copy (no more than an original and two copies), in accordance with the award conditions, to the Federal Program Officer. Performance Reports should be submitted in the same frequency as the Federal Financial Report (Form SF-425), unless otherwise authorized by the Grants Officer.
- b. Performance (technical) reports shall contain brief information as prescribed in the applicable uniform administrative requirements incorporated into the award, unless otherwise specified in the award provisions.

.02 Unsatisfactory Performance

Failure to perform the work in accordance with the terms of the award and maintain at least a satisfactory performance rating or equivalent evaluation may result in designation of the recipient as high risk and assignment of special award conditions or other further action as specified in the standard term and condition entitled “Non-Compliance with Award Provisions.”

.03 Programmatic Changes

The recipient shall report programmatic changes to the Program Officer who forwards the request to the Grants Officer, and shall request prior approvals in accordance with 15 C.F.R. § 14.25 or 15 C.F.R. § 24.30, as applicable.

.04 Other Federal Awards with Similar Programmatic Activities

The recipient shall immediately provide written notification to the Federal Program Officer and the Grants Officer in the event that, subsequent to receipt of the DOC award, other financial assistance is received to support or fund any portion of the scope of work incorporated into the DOC award. DOC will not pay for costs that are funded by other sources.

.05 Non-Compliance with Award Provisions

Failure to comply with any or all of the provisions of the award may have a negative impact on future funding by DOC and may be considered grounds for any or all of the following actions: establishment of an account receivable, withholding payments under any DOC awards to the recipient, changing the method of payment from advance to reimbursement only, or the imposition of other special award conditions, suspension of any active DOC awards, and termination of any active DOC awards.

.06 Prohibition against Assignment by the Recipient

The recipient shall not transfer, pledge, mortgage, or otherwise assign the award, or any interest therein, or any claim arising thereunder, to any party or parties, banks, trust companies, or other financing or financial institutions without the express written approval of the Grants Officer.

.07 Disclaimer Provisions

- a. The United States expressly disclaims any and all responsibility or liability to the recipient or third persons for the actions of the recipient or third persons resulting in death, bodily injury, property damages, or any other losses resulting in any way from the performance of this award or any subaward or subcontract under this award.
- b. The acceptance of this award by the recipient does not in any way constitute an agency relationship between the United States and the recipient.

C. NON-DISCRIMINATION REQUIREMENTS

No person in the United States shall, on the ground of race, color, national origin, handicap, age, religion, or sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance. The recipient agrees to comply with the non-discrimination requirements below:

.01 Statutory Provisions

- a. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d *et seq.*) and DOC implementing regulations published at 15 C.F.R. Part 8 prohibiting discrimination on the grounds of race, color, or national origin under programs or activities receiving Federal financial assistance;
- b. Title IX of the Education Amendments of 1972 (20 U.S.C. §§ 1681 *et seq.*) prohibiting discrimination on the basis of sex under Federally assisted education programs or activities;
- c. 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;
- d. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), and DOC implementing regulations published at 15 C.F.R. Part 8b prohibiting discrimination on the basis of handicap under any program or activity receiving or benefiting from Federal assistance:

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

Section 504 accessibility requirements for new construction and alteration projects under 15 C.F.R. § 8b.18(c), as follows:

1. Public Recipients subject to Title II of the ADA may use either the 2010 Standards or UFAS where the physical construction or alternations commence on or after September 15, 2010 and before March 15, 2012 (see 28 C.F.R. § 35.151(c)(2)); and
2. Private Recipients subject to Title III of the ADA may use either the 2010 Standards or UFAS if the date when the last application for a building permit or permit extension is certified to be complete by a State, county, or local government (or, in those jurisdictions where the government does not certify completion of applications, if the date when the last application for a building permit or permit extension is received by the State, county, or local government) is on or after September 15, 2010 and before March 15, 2012, or if no permit is required, if the start of physical construction or alterations occurs on or after September 15, 2010 and before March 15, 2012 (see 28 C.F.R. § 36.406(a)(2)).

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

As of March 15, 2012, all new construction and alteration projects must comply with the 2010 Standards.

- e. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 *et seq.*), and DOC implementing regulations published at 15 C.F.R. Part 20 prohibiting discrimination on the basis of age in programs or activities receiving Federal financial assistance;
- f. Any other applicable non-discrimination law(s).

.02 Other Provisions

- a. Parts II and III of Executive Order (E.O.) 11246, “Equal Employment Opportunity,” (30 FR 12319, 1965), as amended by E.O. 11375 (32 FR 14303, 1967) and E.O. 12086 (43 FR 46501, 1978), requiring Federally assisted construction contracts to include the nondiscrimination provisions of §§ 202 and 203 of that E.O. and Department of Labor regulations implementing E.O. 11246 (41 C.F.R. § 60-1.4(b), 1991).
- b. Executive Order 13166 (August 11, 2000), “Improving Access to Services for Persons With Limited English Proficiency,” requiring Federal agencies to examine the services provided, identify any need for services to those with limited English proficiency (LEP), and develop and implement a system to provide those services so LEP persons can have meaningful access to them, and DOC policy guidance issued on March 24, 2003 (68 FR 14180) to Federal financial assistance recipients on the Title VI prohibition against national origin discrimination affecting LEP persons.

.03 Title VII Exemption for Religious Organizations

Generally, Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*, provides that it shall be an unlawful employment practice for an employer to discharge any individual or otherwise to discriminate against an individual with respect to compensation, terms, conditions, or privileges of employment because of such individual's race, color, religion, sex, or national origin. However, Title VII, 42 U.S.C. § 2000e-1(a), expressly exempts from the prohibition against discrimination on the basis of religion, a religious corporation, association, educational institution, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities.

D. AUDITS

Under the Inspector General Act of 1978, as amended, 5 U.S.C. App. 3, § 1 *et seq.*, an audit of the award may be conducted at any time. The Inspector General of the DOC, or any of his or her duly authorized representatives, shall have access to any pertinent books, documents, papers, and records of the recipient, whether written, printed, recorded, produced, or reproduced by any electronic, mechanical, magnetic, or other process or medium, in order to make audits, inspections, excerpts, transcripts, or other examinations as authorized by law. When the DOC Office of Inspector General (OIG) requires a program audit on a DOC award, the OIG will usually make the arrangements to audit the award, whether the audit is performed by OIG personnel, an independent accountant under contract with DOC, or any other Federal, State, or local audit entity.

.01 Organization-Wide, Program-Specific, and Project Audits

- a. Organization-wide or program-specific audits shall be performed in accordance with the Single Audit Act Amendments of 1996, as implemented by OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations." Recipients that are subject to the provisions of OMB Circular A-133 and that expend \$500,000 or more in a year in Federal awards shall have an audit conducted for that year in accordance with the requirements contained in OMB Circular A-133. A copy of the audit shall be submitted to the Bureau of the Census, which has been designated by OMB as a central clearinghouse, by electronic submission to the Federal Audit Clearinghouse website <http://harvester.census.gov/sac/>. If it is necessary to submit by paper, the address for submission is:

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

- b. Unless otherwise specified in the terms and conditions of the award, in accordance with 15 C.F.R. § 14.26(c) and (d), for-profit hospitals, commercial entities, and other

organizations not required to follow the audit provisions of OMB Circular A-133 shall have a program specific audit performed by an independent auditor when the Federal share amount awarded is \$500,000 or more over the duration of the project period. An audit is required at least once every two years using the following schedule for audit report submission:

1. For awards where the project period is less than two years, an audit is required within 90 days of the end of the project period to cover the entire project (the award close-out period is included in the 90 days);
2. For awards with a two- or three-year project period, an audit is required within 90 days after the end of the first year to cover Year 1, which is the period of time when Federal funding is available for obligation by the recipient, and within 90 days of the end of the project period to cover Year 2 and Year 3 (if applicable) (the award close-out period is included in the 90 days); or
3. For awards with a four- to five-year project period, an audit is required within 90 days after the end of the first year to cover Year 1, within 90 days after the end of the third year to cover Year 2 and Year 3, and within 90 days of the end of the project period to cover Year 4 and Year 5 (if applicable) (the award close-out period is included in the 90 days).

Some DOC programs have specific audit guidelines that will be incorporated into the award. When DOC does not have a program-specific audit guide available for the program, the auditor will follow the requirements for a program-specific audit as described in OMB Circular A-133, § .235. The recipient may include a line item in the budget for the cost of the audit for approval. A copy of the program-specific audit shall be submitted to the Grants Officer and to the OIG at NonFederalAudits@OIG.DOC.GOV or if e-mail is unavailable, submission to the OIG can be made at the following address:

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

.02 Audit Resolution Process

- a. 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. For this reason, the recipient should take seriously its responsibility to respond to all audit findings and recommendations with adequate explanations and supporting evidence whenever audit results are disputed.
- b. In accordance with the *Federal Register* notice dated January 27, 1989 (54 FR 4053), a recipient whose award is audited has the following opportunities to dispute the proposed disallowance of costs and the establishment of a debt:

1. Unless the Inspector General determines otherwise, the recipient has 30 days from the date of the transmittal of the draft audit report to submit written comments and documentary evidence.
2. The recipient has 30 days from the date of the transmittal of the final audit report to submit written comments and documentary evidence. There will be no extension of this deadline.
3. The DOC shall review the documentary evidence submitted by the recipient and shall notify the recipient of the results in an *Audit Resolution Determination Letter*. The recipient has 30 days from the date of receipt of the *Audit Resolution Determination Letter* to submit a written appeal. There will be no extension of this deadline. The appeal is the last opportunity for the recipient to submit written comments and documentary evidence that dispute the validity of the audit resolution determination.
4. An appeal of the Audit Resolution Determination does not prevent the establishment of the audit-related debt nor does it prevent the accrual of interest on the debt. If the Audit Resolution Determination is overruled or modified on appeal, appropriate corrective action will be taken retroactively. An appeal will stay the offset of funds owed by the auditee against funds due to the auditee.
5. The DOC shall review the recipient's appeal and notify the recipient of the results in an *Appeal Determination Letter*. After the opportunity to appeal has expired or after the appeal determination has been rendered, DOC will not accept any further documentary evidence from the recipient. No other administrative appeals are available in DOC.

E. DEBTS

.01 Payment of Debts Owed the Federal Government

Any debts determined to be owed the Federal Government shall be paid promptly by the recipient. DOC debt collection procedures are set out in 15 C.F.R. Part 19. In accordance with 15 C.F.R. § 19.1, delinquent debt is 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. In accordance with 15 C.F.R. § 19.5 and 31 U.S.C. § 3717, failure to pay a debt by the due date, or if there is no due date, within 30 days of the billing date, shall result in the assessment of interest, penalties and administrative costs in accordance with the provisions of 31 U.S.C. § 3717 and 31 C.F.R. § 901.9. Commerce entities will transfer any Commerce debt that is more than 180 days delinquent to the Financial Management Service for debt collection services, a process known as "cross-servicing," pursuant 31 U.S.C. § 3711(g), 31 C.F.R. § 285.12 and 15 C.F.R. § 19.9, and may result in DOC taking further action as specified in the standard term and condition entitled "Non-Compliance With Award Provisions." Funds for

payment of a debt must not come from other Federally-sponsored programs. Verification that other Federal funds have not been used will be made, e.g., during on-site visits and audits.

.02 Late Payment Charges

- a. Interest shall be assessed on the delinquent debt in accordance with section 3717(a) of the Debt Collection Act (see 31 U.S.C. § 3701 *et seq.* for the entire Debt Collection Act), as amended. The minimum annual interest rate to be assessed is the Department of the Treasury's Current Value of Funds Rate (CVFR). The CVFR is available online at <http://www.fms.treas.gov/cvfr/index.html>. The CVFR is published by the Department of the Treasury in the *Federal Register* (<http://www.gpo.gov/fdsys/browse/collection.action?collectionCode=FR>) and in the *Treasury Financial Manual Bulletin*. The assessed rate shall remain fixed for the duration of the indebtedness.
- b. Penalties shall accrue at a rate of not more than 6 percent per year or such other higher rate as authorized by law.
- c. Administrative charges, that is, the costs of processing and handling a delinquent debt, shall be determined by the Commerce entity collecting the debt, as directed by the Office of the Commerce Deputy Chief Financial Officer.

.03 Barring Delinquent Federal Debtors from Obtaining Federal Loans or Loan Insurance Guarantees

Pursuant to 31 U.S.C. § 3720B and 31 C.F.R. § 901.6, unless waived, the DOC is not permitted to extend financial assistance in the form of a loan, loan guarantee, or loan insurance to any person delinquent on a nontax debt owed to a Federal agency. This prohibition does not apply to disaster loans.

.04 Effect of Judgment Lien on Eligibility for Federal Grants, Loans, or Programs

Pursuant to 28 U.S.C. § 3201(e), unless waived by the DOC, a debtor who has a judgment lien against the debtor's property for a debt to the United States shall not be eligible to receive any grant or loan that is made, insured, guaranteed, or financed directly or indirectly by the United States or to receive funds directly from the Federal Government in any program, except funds to which the debtor is entitled as beneficiary, until the judgment is paid in full or otherwise satisfied.

F. GOVERNMENTWIDE DEBARMENT AND SUSPENSION

The recipient shall comply with the provisions of Subpart C of 2 C.F.R. Part 1326, "Nonprocurement Debarment and Suspension" (published in the *Federal Register* on December

21, 2006, 71 FR 76573), which generally prohibit entities that have been debarred, suspended, or voluntarily excluded from participating in Federal nonprocurement transactions either through primary or lower tier covered transactions, and which sets forth the responsibilities of recipients of Federal financial assistance regarding transactions with other persons, including subrecipients and contractors.

G. DRUG-FREE WORKPLACE

The recipient shall comply with the provisions of the Drug-Free Workplace Act of 1988 (Pub. L. No. 100-690, Title V, Sec. 5153, as amended by Pub. L. No. 105-85, Div. A, Title VIII, Sec. 809, as codified at 41 U.S.C. § 8102) and DOC implementing regulations published at 15 C.F.R. Part 29 “Governmentwide Requirements for Drug-Free Workplace (Financial Assistance),” which require that the recipient take steps to provide a drug-free workplace.

H. LOBBYING RESTRICTIONS

.01 Statutory Provisions

The recipient shall comply with the provisions of 31 U.S.C. § 1352 and DOC implementing regulations published at 15 C.F.R. Part 28, “New Restrictions on Lobbying.” These provisions prohibit the use of Federal funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with the award, and require the disclosure of the use of non-Federal funds for lobbying.

.02 Disclosure of Lobbying Activities

The recipient receiving in excess of \$100,000 in Federal funding shall submit a completed Form SF-LLL, “Disclosure of Lobbying Activities,” regarding the use of non-Federal funds for lobbying. The Form SF-LLL shall be submitted within 30 days following the end of the calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed. The recipient must submit any required Forms SF-LLL, including those received from subrecipients, contractors, and subcontractors, to the Grants Officer.

I. CODES OF CONDUCT AND SUBAWARD, CONTRACT, AND SUBCONTRACT PROVISIONS

.01 Code of Conduct for Recipients

Pursuant to the certification in Form SF-424B, paragraph 3, the recipient must maintain written standards of conduct to establish safeguards to prohibit employees from using their positions for

a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain in the administration of this award.

.02 Applicability of Award Provisions to Subrecipients

- a. The recipient shall require all subrecipients, including lower tier subrecipients, under the award to comply with the provisions of the award, including applicable cost principles, administrative, audit requirements, and all associated terms and conditions.
- b. A recipient is responsible for subrecipient monitoring, including the following:
 1. Award Identification. At the time of the award, identifying to the subrecipient the Federal award information (e.g., CFDA title and number, award name, name of Federal agency) and applicable compliance requirements.
 2. During-the-Award Monitoring. Monitoring the subrecipient's use of Federal awards through reporting, site visits, regular contact, or other means to provide reasonable assurance that the subrecipient administers Federal awards in compliance with applicable laws, regulations, and the provisions of contracts or grant agreements and that performance goals are achieved.
 3. Subrecipient Audits. Ensuring that subrecipients expending \$500,000 or more in Federal awards during the subrecipient's fiscal year have met the audit requirements of OMB Circular A-133, and that the required audits are completed within 9 months of the end of the subrecipient's audit period. In addition, the recipient is required to issue a management decision on audit findings within 6 months after receipt of the subrecipient's audit report, and ensuring that the subrecipient takes timely and appropriate corrective action on all audit findings. In cases of continued inability or unwillingness of a subrecipient to have the required audits, the pass-through entity shall take appropriate action using sanctions.

.03 Competition and Codes of Conduct for Subawards

- a. All subawards will be made in a manner to provide, to the maximum extent practicable, open and free competition. The recipient must be alert to organizational conflicts of interest as well as other practices among subrecipients that may restrict or eliminate competition. In order to ensure objective subrecipient performance and eliminate unfair competitive advantage, subrecipients that develop or draft work requirements, statements of work, or requests for proposals shall be excluded from competing for such subawards.
- b. The recipient shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of subawards. No employee, officer, or agent shall participate in the selection, award, or administration of a subaward supported by Federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when the employee, officer, or agent, any member of his or her immediate

family, his or her partner, or an organization in which he/she serves as an officer or which employs or is about to employ any of the parties mentioned in this section, has a financial interest or other interest in the organization selected or to be selected for a subaward. The officers, employees, and agents of the recipient shall neither solicit nor accept anything of monetary value from subrecipients. However, the recipient may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct shall provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the recipient.

- c. A financial interest may include employment, stock ownership, a creditor or debtor relationship, or prospective employment with the organization selected or to be selected for a subaward. 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. It could also result from non-financial gain to the individual, such as benefit to reputation or prestige in a professional field.

.04 Applicability of Provisions to Subawards, Contracts, and Subcontracts

- a. The recipient shall include the following notice in each request for applications or bids for a subaward, contract, or subcontract, as applicable:

Applicants/bidders for a lower tier covered transaction (except procurement contracts for goods and services under \$25,000 not requiring the consent of a DOC official) are subject to 2 C.F.R. Part 1326, Subpart C “Governmentwide Debarment and Suspension (Nonprocurement).” In addition, applicants/bidders for a lower tier covered transaction for a subaward, contract, or subcontract greater than \$100,000 of Federal funds at any tier are subject to 15 C.F.R. Part 28, “New Restrictions on Lobbying.” Applicants/bidders should familiarize themselves with these provisions, including the certification requirement. Therefore, applications for a lower tier covered transaction must include a Form CD-512, “Certification Regarding Lobbying--Lower Tier Covered Transactions,” completed without modification.

- b. The recipient shall include a term or condition in all lower tier covered transactions (subawards, contracts, and subcontracts), that the award is subject to Subpart C of 2 C.F.R. Part 1326, “Nonprocurement Debarment and Suspension.”
- c. The recipient shall include a statement in all lower tier covered transactions (subawards, contracts, and subcontracts) exceeding \$100,000 in Federal funds, that the subaward, contract, or subcontract is subject to 31 U.S.C § 1352, as implemented at 15 C.F.R. Part 28, “New Restrictions on Lobbying.” The recipient shall further require the subrecipient, contractor, or subcontractor to submit a completed “Disclosure of Lobbying Activities” (Form SF-LLL) regarding the use of non-Federal funds for lobbying. The Form SF-LLL shall be submitted within 15 days following the end of the calendar quarter in which there

occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed. The Form SF-LLL shall be submitted from tier to tier until received by the recipient. The recipient must submit all disclosure forms received, including those that report lobbying activity on its own behalf, to the Grants Officer within 30 days following the end of the calendar quarter.

.05 Small Businesses, Minority Business Enterprises and Women's Business Enterprises

DOC encourages recipients to utilize small businesses, minority business enterprises and women's business enterprises in contracts under financial assistance awards. The Minority Business Development Agency will assist recipients in matching qualified minority business enterprises with contract opportunities. For further information visit MBDA's website at <http://www.mbda.gov>. If you do not have access to the Internet, you may contact MBDA via telephone or mail:

U.S. Department of Commerce
Minority Business Development Agency
Herbert C. Hoover Building
14th Street and Constitution Avenue, N.W.
Washington, D.C. 20230
(202) 482-0101

.06 Subaward and/or Contract to a Federal Agency

- a. The recipient, subrecipient, contractor, and/or subcontractor shall not sub-grant or sub-contract any part of the approved project to any agency or employee of DOC and/or other Federal department, agency, or instrumentality without the prior written approval of the Grants Officer.
- b. Requests for approval of such action must be submitted to the Federal Program Officer who shall review and make a recommendation to the Grants Officer. The Grants Officer must forward all requests to the Federal Assistance Law Division in the Office of the Department of Commerce Assistant General Counsel for Finance and Litigation for review prior to making the final determination. The Grants Officer will notify the recipient in writing of the final determination.

J. PROPERTY

.01 Standards

The recipient shall comply with the property management standards as stipulated in the uniform administrative requirements set forth in 15 C.F.R. §§ 14.30 - 14.37 and 15 C.F.R. §§ 24.31 - 24.34.

.02 Real and Personal Property

A recipient holds all real property and tangible and intangible personal property that it acquires or improves, in whole or in part, with funds made available under a DOC financial assistance award in trust for the public purposes for which the award was made. This trust relationship exists throughout the duration of the property's estimated useful life, as determined by the Grants Officer in consultation with the Program Office, during which time the Federal Government retains an undivided, equitable reversionary interest in the property (Federal Interest). During the duration of the Federal Interest, the recipient shall comply with all use and disposition requirements and restrictions as set forth in 15 C.F.R. §§ 14.30 – 14.37 and 15 C.F.R. §§ 24.31 – 24.34, as applicable, and in the terms and conditions of the financial assistance award. The Grants Officer may require a recipient to execute a security interest or other public notice of record to indicate that real or personal property acquired or improved in whole or in part with Federal funds is subject to the Federal Interest, and that certain use and disposition requirements apply to the property. The security interest or other public notice must be acceptable in form and substance to the DOC and must be perfected and placed of record in accordance with applicable State and local law, with continuances re-filed as appropriate. In such cases, the Grants Officer may further require the recipient to provide the DOC with a written statement from a licensed attorney in the jurisdiction where the property is located certifying that the Federal Interest has been protected, as required under the award and in accordance with applicable State and 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 Grants Officer may elect not to release any or a portion of the Federal award funds until the recipient has complied with this provision any other applicable award terms or conditions, unless other arrangements satisfactory to the Grants Officer are made.

The Grants Officer may require the recipient to submit Form SF-428, Tangible Personal Property Report, and/or Form SF-429, Real Property Status Report, including applicable attachments to each form, in connection with the reporting of tangible personal property or of real property acquired or improved, in whole or in part, under a DOC financial assistance award, or of Federally-owned property that is in the recipient's custody pursuant to a DOC financial assistance award. The Grants Officer may also require the recipient to submit Form SF-428 and/or Form SF-429 in connection with a recipient's request to acquire, encumber, dispose of, or any other action or activity pertaining to tangible personal property or to real property acquired or improved, in whole or in part, under a DOC financial assistance award or to Federally-owned property.

K. ENVIRONMENTAL REQUIREMENTS

Environmental impacts must be considered by Federal decision makers in their decisions whether or not to: (1) approve a proposal for Federal assistance; (2) approve the proposal with mitigation; or (3) approve a different proposal/grant having less adverse environmental impacts. Federal environmental laws require that the funding agency initiate an early planning process

that considers potential impacts that projects funded with Federal assistance may have on the environment. The recipient and subrecipients must comply with all environmental standards, to include those prescribed under the following statutes and E.O.s, and shall identify to the awarding agency any impact the award may have on the environment. In some cases, award funds can be withheld by the Grants Officer under a special award condition requiring the recipient to submit additional environmental compliance information sufficient to enable the DOC to make an assessment on any impacts that a project may have on the environment.

.01 The National Environmental Policy Act (42 U.S.C. § 4321 *et seq.*)

The National Environmental Policy Act (NEPA) and the Council on Environmental Quality (CEQ) implementing regulations (40 C.F.R. Parts 1500 through 1508) require that an environmental analysis be completed for all major Federal actions significantly affecting the environment. NEPA applies to the actions of Federal agencies and may include a Federal agency's decision to fund non-Federal projects under grants and cooperative agreements when the award activities remain subject to Federal authority and control. Recipients of Federal assistance are required to identify to the awarding agency any impact an award will have on the quality of the human environment, and assist the agency in complying with NEPA. Recipients may also be requested to assist DOC in drafting an environmental assessment or environmental impact statement if DOC determines such documentation is required. Until such time as the appropriate NEPA documentation is complete, funds can be withheld by the Grants Officer under a special award condition requiring the recipient to submit the appropriate NEPA documentation sufficient to enable DOC to make an assessment on any impacts that a project may have on the environment. In the event that any additional information is required during the project period in order to assess any impacts that a project may have on the environment, funds can be withheld by the Grants Officer under a special award condition requiring the recipient to submit such additional environmental compliance information sufficient to enable DOC to make the requisite assessment.

.02 National Historic Preservation Act (16 U.S.C. § 470 *et seq.*)

Section 106 of the National Historic Preservation Act (NHPA) (16 U.S.C. § 470f) and the Advisory Council on Historic Preservation implementing regulations (36 C.F.R. Part 800) require that Federal agencies take into account the effects of their undertakings on historic properties. Recipients of Federal funding are required to identify to the awarding agency any effects the award may have on properties included on or eligible for inclusion on the National Register of Historic Places. Recipients may also be requested to assist DOC in consulting with State or Tribal Historic Preservation Officers or other applicable interested parties necessary to identify, assess and resolve adverse effects to historic properties. Until such time as the appropriate NHPA consultations and documentation is complete, funds can be withheld by the Grants Officer under a special award condition requiring the recipient to fully comply with the requirement of the NHPA. In the event that any additional information is required during the project period in order to assess any impacts that a project may have on historic properties, funds can be withheld by the Grants Officer under a special award condition requiring the recipient to submit such additional information sufficient to enable DOC to make the requisite assessment.

.03 Executive Order 11988 (“Floodplain Management”) and Executive Order 11990 (“Protection of Wetlands”)

Recipients must identify proposed actions in Federally defined floodplains and wetlands to enable DOC to make a determination whether there is an alternative to minimize any potential harm.

.04 Clean Air Act (42 U.S.C. § 7401 *et seq.*), Federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq.*) (Clean Water Act), and Executive Order 11738 (“Providing for administration of the Clean Air Act and the Federal Water Pollution Control Act with respect to Federal contracts, grants or loans”)

Recipients must comply with the provisions of the Clean Air Act (42 U.S.C. § 7401 *et seq.*), Clean Water Act (33 U.S.C. § 1251 *et seq.*), and E.O. 11738, and shall not use a facility on the Environmental Protection Agency’s (EPA) List of Violating Facilities (this list is incorporated into the Excluded Parties List System located at <https://www.sam.gov/portal/public/SAM/>) in performing any award that is nonexempt under 2 C.F.R. § 1532, and shall notify the Program Officer in writing if it intends to use a facility that is on the EPA List of Violating Facilities or knows that the facility has been recommended to be placed on the List.

.05 The Flood Disaster Protection Act (42 U.S.C. § 4002 *et seq.*)

Flood insurance, when available, is required for Federally assisted construction or acquisition in flood-prone areas.

.06 The Endangered Species Act (16 U.S.C. § 1531 *et seq.*)

Recipients must identify any impact or activities that may involve a threatened or endangered species. Federal agencies have the responsibility to ensure that no adverse effects to a protected species or habitat occur from actions under Federal assistance awards and conduct the reviews required under the Endangered Species Act, as applicable.

.07 The Coastal Zone Management Act (16 U.S.C. § 1451 *et seq.*)

Funded projects must be consistent with a coastal State’s approved management program for the coastal zone.

.08 The Coastal Barriers Resources Act (16 U.S.C. § 3501 *et seq.*)

Only in certain circumstances can Federal funding be provided for actions within a Coastal Barrier System.

.09 The Wild and Scenic Rivers Act (16 U.S.C. § 1271 *et seq.*)

This Act applies to awards that may affect existing or proposed components of the National Wild and Scenic Rivers system.

.10 The Safe Drinking Water Act of 1974, as amended, (42 U.S.C. § 300f *et seq.*)

This Act precludes Federal assistance for any project that the EPA determines may contaminate a sole source aquifer so as to threaten public health.

.11 The Resource Conservation and Recovery Act (42 U.S.C. § 6901 *et seq.*)

This Act regulates the generation, transportation, treatment, and disposal of hazardous wastes, and also provides that recipients of Federal funds give preference in their procurement programs to the purchase of recycled products pursuant to EPA guidelines.

.12 The Comprehensive Environmental Response, Compensation, and Liability Act (Superfund) (42 U.S.C. § 9601 *et seq.*) and the Community Environmental Response Facilitation Act (41 U.S.C. § 11001 *et seq.*)

These requirements address responsibilities related to hazardous substance releases, threatened releases and environmental cleanup. There are also reporting and community involvement requirements designed to ensure disclosure of the release or disposal of regulated substances and cleanup of hazards to state and local emergency responders.

.13 Executive Order 12898 (“Environmental Justice in Minority Populations and Low Income Populations”)

Federal agencies are required to identify and address the disproportionately high and adverse human health or environmental effects of Federal programs, policies, and activities on low income and minority populations.

L. MISCELLANEOUS REQUIREMENTS

.01 Criminal and Prohibited Activities

- a. The Program Fraud Civil Remedies Act (31 U.S.C. § 3801 *et seq.*), provides for the imposition of civil penalties against persons who make false, fictitious, or fraudulent claims to the Federal Government for money (including money representing grants, loans, or other benefits).

- b. The False Claims Amendments Act and the False Statements Act (18 U.S.C. §§ 287 and 1001, respectively), provide that whoever makes or presents any false, fictitious, or fraudulent statement, representation, or claim against the United States shall be subject to imprisonment of not more than five years and shall be subject to a fine in the amount provided by 18 U.S.C. § 287.
- c. The Civil False Claims Act (31 U.S.C. § 3729 *et seq.*), provides that suits can be brought by the government, or a person on behalf of the government, for false claims made under Federal assistance programs.
- d. The Copeland “Anti-Kickback” Act (18 U.S.C. § 874), prohibits a person or organization engaged in a Federally supported project from enticing an employee working on the project from giving up a part of his compensation under an employment contract. The Copeland “Anti-Kickback” Act also applies to contractors and subcontractors pursuant to 40 U.S.C. § 3145.

.02 Foreign Travel

- a. The recipient shall comply with the provisions of the Fly America Act (49 U.S.C. § 40118). The implementing regulations of the Fly America Act are found at 41 C.F.R. §§ 301-10.131 through 301-10.143.
- b. The Fly America Act requires that Federal travelers and others performing U.S. Government-financed air travel must use U.S. flag air carriers, to the extent that service by such carriers is available. Foreign air carriers may be used only in specific instances, such as when a U.S. flag air carrier is unavailable, or use of U.S. flag air carrier service will not accomplish the agency’s mission.
- c. One exception to the requirement to fly U.S. flag carriers is transportation provided under a bilateral or multilateral air transport agreement, to which the United States Government and the government of a foreign country are parties, and which the Department of Transportation has determined meets the requirements of the Fly America Act pursuant to 49 U.S.C. § 40118(b). The United States Government has entered into bilateral/multilateral “Open Skies Agreements” (U.S. Government Procured Transportation) that allow federal funded transportation services for travel and cargo movements to use foreign air carriers under certain circumstances. There are multiple “Open Skies Agreements” currently in effect. For more information about the current bilateral and multilateral agreements, visit the GSA website <http://www.gsa.gov/portal/content/103191>. Information on the Open Skies agreements (U.S. Government Procured Transportation) and other specific country agreements may be accessed via the Department of State’s website <http://www.state.gov/e/eeb/tra/>.
- d. If a foreign air carrier is anticipated to be used for any portion of travel under a DOC financial assistance award the recipient must receive prior approval from the Grants Officer. When requesting such approval, the recipient must provide a justification in accordance with

guidance provided by 41 C.F.R. § 301-10.142, which requires the recipient to provide the Grants Officer with the following: name; dates of travel; origin and destination of travel; detailed itinerary of travel; name of the air carrier and flight number for each leg of the trip; and a statement explaining why the recipient meets one of the exceptions to the regulations. If the use of a foreign air carrier is pursuant to a bilateral agreement, the recipient must provide the Grants Officer with a copy of the agreement or a citation to the official agreement available on the GSA website. The Grants Officer shall make the final determination and notify the recipient in writing. Failure to adhere to the provisions of the Fly America Act will result in the recipient not being reimbursed for any transportation costs for which the recipient improperly used a foreign air carrier.

.03 American-Made Equipment and Products

Recipients are hereby notified that they are encouraged, to the greatest extent practicable, to purchase American-made equipment and products with funding provided under this award.

.04 Intellectual Property Rights

- a. Inventions. Unless otherwise provided by law, the rights to any invention made by a recipient under a DOC financial assistance award are determined by the Bayh-Dole Act, Pub. L. No. 96-517, as amended, and as codified in 35 U.S.C. § 200 *et seq.*, except as otherwise required by law. The specific requirements governing the development, reporting, and disposition of rights to inventions and patents resulting from financial assistance awards are described in more detail in 37 C.F.R. Part 401 and in particular, in the standard patent rights clause in 37 C.F.R. § 401.14, which is hereby incorporated by reference into this award.
 1. Ownership.
 - (a) Recipient. The recipient has the right to elect to retain title to any invention it makes (conceived or first actually reduced to practice) or is made by its employees. A recipient that is a non-profit organization, which includes a university or other institution of higher learning, may not assign to a third party its rights to such an invention without the permission of DOC unless that assignment is to a patent management organization (i.e., a university's Research Foundation.) The recipient's ownership rights are subject to the Government's nonexclusive, nontransferable, irrevocable, paid-up license and other rights.
 - (b) Department. If the recipient elects not to retain title, fails to disclose the invention to the agency within the required time limits, or does not file a patent application within the time limits set forth in the standard patent rights clause, DOC may request an assignment of all rights, which is normally subject to a limited royalty free nonexclusive revocable license for the recipient. DOC owns any invention made solely by its employees, but

may license the recipient in accordance with the procedures in 37 C.F.R. Part 404.

- (c) Inventor/Employee. If neither the recipient nor DOC is interested in owning an invention by a recipient employee, the recipient, with the written concurrence of DOC, may allow the inventor/employee to retain ownership of the invention subject to certain restrictions as described in 37 C.F.R. § 401.9.
- (d) Joint inventions. Inventions made jointly by a recipient and a DOC employee will be owned jointly by the recipient and DOC. However, DOC may transfer or license its rights to the recipient as authorized by 35 U.S.C. § 202(e) and 37 C.F.R. § 401.10 if the recipient is willing to patent and license the invention usually in exchange for a share of “net” royalties based on the number of inventors (e.g., 50-50 if there is one recipient inventor and one DOC employee inventor). The agreement will be prepared by DOC and may include other provisions, such as a royalty free license to the Government and certain other entities. The provision at 35 U.S.C. § 202(e) also authorizes the recipient to transfer its rights to the Government, which can agree to share royalties similarly as described above.

2. Responsibilities - iEdison. The recipient has responsibilities and duties set forth in the standard patent rights clause, which are not described below. The recipient is expected to comply with all the requirements of the standard patent rights clause and 37 C.F.R. Part 401. Recipients of DOC financial assistance awards are required to submit their disclosures and elections electronically using the Interagency Edison extramural invention reporting system (iEdison) at www.iedison.gov. Recipients may obtain a waiver of this electronic submission requirement by providing to DOC compelling reasons for allowing the submission of paper copies of reports related to inventions.

b. Patent Notification Procedures.

Pursuant to E.O. 12889, DOC is required to notify the owner of any valid patent covering technology whenever the DOC or its financial assistance recipients, without making a patent search, knows (or has demonstrable reasonable grounds to know) that technology covered by a valid United States patent has been or will be used without a license from the owner. To ensure proper notification, if the recipient uses or has used patented technology under this award without a license or permission from the owner, the recipient must notify the Grants Officer.

This notice does not necessarily mean that the Government authorizes and consents to any copyright or patent infringement occurring under the financial assistance award.

c. Data, Databases, and Software.

The rights to any work produced or purchased under a DOC Federal financial assistance award are determined by 15 C.F.R. § 24.34, for State and Local Governments, and 15 C.F.R. § 14.36, for Institutions of Higher Education, Hospitals, Other Non-Profit, and Commercial Organizations. Such works may include data, databases or software. The recipient owns any work produced or purchased under a DOC Federal financial assistance award subject to DOC's right to obtain, reproduce, publish or otherwise use the work or authorize others to receive, reproduce, publish or otherwise use the data for Government purposes.

d. Copyright.

The recipient may copyright any work produced under a DOC Federal financial assistance award subject to DOC's royalty-free nonexclusive and irrevocable right to reproduce, publish or otherwise use the work, or authorize others to do so for Government purposes. Works jointly authored by DOC and recipient employees may be copyrighted but only the part authored by the recipient is protected because, under 17 U.S.C. § 105, works produced by Government employees are not copyrightable in the United States. On occasion, DOC may require the recipient to transfer to DOC its copyright in a particular work for government purposes or when DOC is undertaking the primary dissemination of the work. Ownership of copyright by the Government through assignment is permitted by 17 U.S.C. § 105.

.05 Increasing Seat Belt Use in the United States

Pursuant to E.O. 13043, recipients should encourage employees and contractors to enforce on-the-job seat belt policies and programs when operating company-owned, rented, or personally owned vehicles.

.06 Research Involving Human Subjects

- a. All proposed research involving human subjects must be conducted in accordance with 15 C.F.R. Part 27, "Protection of Human Subjects." No research involving human subjects is permitted under this award unless expressly authorized by special award condition, or otherwise in writing by the Grants Officer.
- b. Federal policy defines a human subject as a living individual about whom an investigator conducting research obtains (1) data through intervention or interaction with the individual, or (2) identifiable private information. Research means a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge.
- c. DOC regulations at 15 C.F.R. Part 27 require that recipients maintain appropriate policies and procedures for the protection of human subjects. In the event it becomes evident that human subjects may be involved in this project, the recipient shall submit appropriate documentation to the Federal Program Officer for approval by the appropriate DOC officials. This documentation may include:

1. Documentation establishing approval of the project by an institutional review board (IRB) approved for Federal-wide use under Department of Health and Human Services guidelines (*see also* 15 C.F.R. § 27.103);
 2. Documentation to support an exemption for the project under 15 C.F.R. § 27.101(b);
 3. Documentation to support deferral for an exemption or IRB review under 15 C.F.R. § 27.118;
 4. Documentation of IRB approval of any modification to a prior approved protocol or to an informed consent form.
- d. No work involving human subjects may be undertaken, conducted, or costs incurred and/or charged for human subjects research, until the appropriate documentation is approved in writing by the Grants Officer. Notwithstanding this prohibition, work may be initiated or costs incurred and/or charged to the project for protocol or instrument development related to human subjects research.

.07 Federal Employee Expenses

Federal agencies are generally barred from accepting funds from a recipient to pay transportation, travel, or other expenses for any Federal employee. Use of award funds (Federal or non-Federal) or the recipient's provision of in-kind goods or services, for the purposes of transportation, travel, or any other expenses for any Federal employee may raise appropriation augmentation issues. In addition, DOC policy prohibits the acceptance of gifts, including travel payments for Federal employees, from recipients or applicants regardless of the source.

.08 Minority Serving Institutions Initiative

Pursuant to E.O.s 13555 (“White House Initiative on Educational Excellence for Hispanics”), 13270 (“Tribal Colleges and Universities”), and 13532 (“Promoting Excellence, Innovation, and Sustainability at Historically Black Colleges and Universities”), DOC is strongly committed to broadening the participation of minority serving institutions (MSIs) in its financial assistance programs. DOC’s goals include achieving full participation of MSIs in order to advance the development of human potential, strengthen the Nation’s capacity to provide high-quality education, and increase opportunities for MSIs to participate in and benefit from Federal financial assistance programs. DOC encourages all applicants and recipients to include meaningful participation of MSIs. Institutions eligible to be considered MSIs are listed on the Department of Education website.

.09 Research Misconduct

The DOC adopts, and applies to financial assistance awards for research, the Federal Policy on Research Misconduct (Federal Policy) issued by the Executive Office of the President’s Office of Science and Technology Policy on December 6, 2000 (65 Fed. Reg. 76260 (2000)). As

provided for in the Federal Policy, research misconduct refers to the fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results. Research misconduct does not include honest errors or differences of opinion. Recipient organizations that conduct extramural research funded by DOC must foster an atmosphere conducive to the responsible conduct of sponsored research by safeguarding against and resolving allegations of research misconduct. Recipient organizations also have the primary responsibility to prevent, detect, and investigate allegations of research misconduct and, for this purpose, may rely on their internal policies and procedures, as appropriate, to do so. Federal award funds expended on an activity that is determined to be invalid or unreliable because of research misconduct may result in appropriate enforcement action under the award, up to and including award termination and possible suspension or debarment. The DOC requires that any allegation that contains sufficient information to proceed with an inquiry be submitted to the Grants Officer, who will also notify the OIG of such allegation. Once the recipient organization has investigated the allegation, it will submit its findings to the Grants Officer. The DOC may accept the recipient's findings or proceed with its own investigation. The Grants Officer shall inform the recipient of the DOC's final determination.

.10 Publications, Videos and Acknowledgment of Sponsorship

- a. Publication of results or findings in appropriate professional journals and production of video or other media is encouraged as an important method of recording, reporting and otherwise disseminating information and expanding public access to federally-funded projects (*e.g.*, scientific research).
- b. Recipients may be required to submit a copy of any publication materials, including but not limited to print, recorded or Internet materials, to the funding agency.
- c. When releasing information related to a funded project, recipients must include a statement that the project or effort undertaken was or is sponsored by DOC.
- d. Recipients are responsible for assuring that every publication of material based on, developed under, or otherwise produced under a DOC financial assistance award, except scientific articles or papers appearing in scientific, technical or professional journals, contains the following disclaimer or other disclaimer approved by the Grants Officer:

This [report/video/etc.] was prepared by [recipient name] using Federal funds under award [number] from [name of operating unit], U.S. Department of Commerce. The statements, findings, conclusions, and recommendations are those of the author(s) and do not necessarily reflect the views of the [name of operating unit] or the U.S. Department of Commerce.

.11 Care and Use of Live Vertebrate Animals

Recipients must comply with the Laboratory Animal Welfare Act of 1966, as amended, (Pub. L. No. 89-544, 7 U.S.C. § 2131 *et seq.*) (animal acquisition, transport, care, handling, and

use in projects), and implementing regulations, 9 C.F.R. Parts 1, 2, and 3; the Endangered Species Act (16 U.S.C. § 1531 *et seq.*); Marine Mammal Protection Act (16 U.S.C. § 1361 *et seq.*) (taking possession, transport, purchase, sale, export or import of wildlife and plants); the Nonindigenous Aquatic Nuisance Prevention and Control Act (16 U.S.C. § 4701 *et seq.*) (ensure preventive measures are taken or that probable harm of using species is minimal if there is an escape or release); and all other applicable statutes pertaining to the care, handling, and treatment of warm-blooded animals held for research, teaching, or other activities supported by Federal financial assistance. No research involving vertebrate animals is permitted under any DOC financial assistance award unless authorized by the Grants Officer.

.12 Homeland Security Presidential Directive 12

If the performance of a grant award requires recipient organization personnel to have routine access to Federally-controlled facilities and/or Federally-controlled information systems (for purpose of this term “routine access” is defined as more than 180 days), such personnel must undergo the personal identity verification credential process. In the case of foreign nationals, the DOC will conduct a check with U.S. Citizenship and Immigration Services’ (USCIS) Verification Division, a component of the Department of Homeland Security (DHS), to ensure the individual is in a lawful immigration status and that he or she is eligible for employment within the United States. Any items or services delivered under a financial assistance award shall comply with DOC personal identity verification procedures that implement Homeland Security Presidential Directive 12, “Policy for a Common Identification Standard for Federal Employees and Contractors”, FIPS PUB 201, and OMB Memorandum M-05-24. The recipient shall ensure that its subrecipients and contractors (at all tiers) performing work under this award comply with the requirements contained in this term. The Grants Officer may delay final payment under an award if the subrecipient or contractor fails to comply with the requirements listed in the term below. The recipient shall insert the following term in all subawards and contracts when the subaward recipient or contractor is required to have routine physical access to a Federally-controlled facility or routine access to a Federally-controlled information system:

- a. The subrecipient or contractor shall comply with DOC personal identity verification procedures identified in the subaward or contract that implement Homeland Security Presidential Directive 12 (HSPD-12), Office of Management and Budget (OMB) Guidance M-05-24, as amended, and Federal Information Processing Standards Publication (FIPS PUB) Number 201, as amended, for all employees under this subaward or contract who require routine physical access to a Federally-controlled facility or routine access to a Federally-controlled information system.*
- b. The subrecipient or contractor shall account for all forms of Government-provided identification issued to the subrecipient or contractor employees in connection with performance under this subaward or contract. The subrecipient or contractor shall return such identification to the issuing agency at the earliest of any of the following, unless otherwise determined by DOC: (1) When no longer needed for subaward or contract performance; (2) Upon completion of the subrecipient or contractor employee’s employment; (3) Upon subaward or contract completion or termination.*

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

- a. This clause applies to the extent that this financial assistance award involves access to export-controlled items.
- b. In performing this financial assistance award, the recipient may gain access to items subject to export control (export-controlled items) under the Export Administration Regulations (EAR). The recipient is responsible for compliance with all applicable laws and regulations regarding export-controlled items, including the EAR's deemed exports and reexports provisions. The recipient shall establish and maintain effective export compliance procedures at DOC and non-DOC facilities throughout performance of the financial assistance award. At a minimum, these export compliance procedures must include adequate controls of physical, verbal, visual, and electronic access to export-controlled items, including by foreign nationals.
- c. Definitions
 1. Export-controlled items. Items (commodities, software, or technology), that are subject to the EAR (15 C.F.R. §§ 730-774), implemented by the DOC's Bureau of Industry and Security. These are generally known as "dual-use" items, items with a military and commercial application.
 2. Deemed Export/Reexport. The EAR defines a deemed export as a release of export-controlled items (specifically, technology or source code) to a foreign national in the U.S. Such release is "deemed" to be an export to the home country of the foreign national. 15 C.F.R. § 734.2(b)(2)(ii). A release may take the form of visual inspection, oral exchange of information, or the application abroad of knowledge or technical experience acquired in the U.S. If such a release occurs abroad, it is considered a deemed reexport to the foreign national's home country. Licenses from DOC may be required for deemed exports or reexports.
- d. The recipient shall control access to all export-controlled items that it possesses or that comes into its possession in performance of this financial assistance award, to ensure that access to, or release of, such items are restricted, or licensed, as required by applicable Federal laws, E.O.s, and/or regulations, including the EAR.
- e. As applicable, recipient personnel and associates at DOC sites will be informed of any procedures to identify and protect export-controlled items.
- f. To the extent the recipient wishes to provide foreign nationals with access to export-controlled items, the recipient shall be responsible for obtaining any necessary licenses, including licenses required under the EAR for deemed exports or deemed reexports.

- g. Nothing in the terms of this financial assistance award is intended to change, supersede, or waive the requirements of applicable Federal laws, E.O.s or regulations.
- h. Compliance with this term will not satisfy any legal obligations the recipient may have regarding items that may be subject to export controls administered by other agencies such as the Department of State, which has jurisdiction over exports of munitions items subject to the International Traffic in Arms Regulations (ITAR) (22 C.F.R. §§ 120-130), including releases of such items to foreign nationals.
- i. The recipient shall include this clause, including this paragraph (i), in all lower tier transactions (subawards, contracts, and subcontracts) under this financial assistance award that may involve access to export-controlled items.

.14 The Trafficking Victims Protection Act of 2000 (22 U.S.C. 7104(g)), as amended, and the implementing regulations at 2 C.F.R. part 175

The Trafficking Victims Protection Act of 2000 authorizes termination of financial assistance provided to a private entity, without penalty to the Federal Government, if the recipient or subrecipient engages in certain activities related to trafficking in persons. The Department of Commerce hereby incorporates the following award term required by 2 C.F.R. § 175.15(b). *See* <http://www.gpo.gov/fdsys/pkg/CFR-2012-title2-vol1/pdf/CFR-2012-title2-vol1-sec175-15.pdf>.

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

- a. Provisions applicable to a recipient that is a private entity.
 - 1. You as the recipient, your employees, subrecipients under this award, and subrecipients' employees may not—
 - i. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
 - ii. Procure a commercial sex act during the period of time that the award is in effect; or
 - iii. Use forced labor in the performance of the award or subawards under the award.
 - 2. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if you or a subrecipient that is a private entity —
 - i. Is determined to have violated a prohibition in paragraph a.1 of this award term; or
 - ii. Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph a.1 of this award term through conduct that is either— (A) Associated with performance under this award; or (B) Imputed to you or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 C.F.R. Part 180, “OMB Guidelines to Agencies on

Governmentwide Debarment and Suspension (Nonprocurement),” as implemented by DOC at 2 C.F.R. Part 1326, “Nonprocurement Debarment and Suspension.”

- b. Provision applicable to a recipient other than a private entity. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity—
 1. Is determined to have violated an applicable prohibition in paragraph a.1 of this award term; or
 2. Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph a.1 of this award term through conduct that is either—
 - i. Associated with performance under this award; or
 - ii. Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 C.F.R. Part 180, “OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” as implemented by DOC at 2 C.F.R. Part 1326, “Nonprocurement Debarment and Suspension.”
- c. Provisions applicable to any recipient.
 1. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a.1 of this award term.
 2. Our right to terminate unilaterally that is described in paragraph a.2 or b of this section:
 - i. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and
 - ii. Is in addition to all other remedies for noncompliance that are available to us under this award.
 3. You must include the requirements of paragraph a.1 of this award term in any subaward you make to a private entity.
- d. Definitions. For purposes of this award term:
 1. Employee means either:
 - i. An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or
 - ii. Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer

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

2. Forced labor means: labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.
3. Private entity:
 - i. Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR 175.25;
 - ii. Includes: (A) A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 CFR 175.25(b); and (B) A for-profit organization.
4. “Severe forms of trafficking in persons,” “commercial sex act,” and “coercion” have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. 7102).

.15 The Federal Funding Accountability and Transparency Act of 2006 (Pub. L. No. 109-282, 31 USCA § 6101 note)

- a. Searchable Website Requirements. The Federal Funding Accountability and Transparency Act of 2006 (FFATA) requires information on Federal awards (Federal financial assistance and expenditures) be made available to the public via a single, searchable website. This information is available at www.USASpending.gov. Recipients and subrecipients must include the following required data elements in their application:
 - Name of entity receiving award;
 - Award amount;
 - Transaction type, funding agency, Catalog of Federal Domestic Assistance Number, and descriptive award title;
 - Location of entity, primary location of performance (City/State/Congressional District/Country; and
 - Unique identifier of entity.
- b. Reporting Subawards and Executive Compensation. Prime grant recipients awarded a new Federal grant greater than or equal to \$25,000 on or after October 1, 2010, other than those funded by the Recovery Act, are subject to FFATA subaward reporting requirements as outlined in the OMB guidance issued August 27, 2010. The prime recipient is required to file a FFATA subaward report by the end of the month following the month in which the prime recipient awards any sub-grant greater than or equal to \$25,000. See Pub. L. No. 109-282, as amended by section 6202(a) of Pub. L. No. 110-252 (*see* 31 U.S.C. 6101 note). The reporting requirements are located in Appendix A of 2 C.F.R. Part 170 and are available on

GPO's FDsys website: <http://www.gpo.gov/fdsys/pkg/CFR-2011-title2-vol1/pdf/CFR-2011-title2-vol1-part170-appA.pdf>.

Award Term from Appendix A of 2 C.F.R. Part 170:

a. Reporting of first-tier subawards.

1. Applicability. Unless you are exempt as provided in paragraph d. of this award term, you must report each action that obligates \$25,000 or more in Federal funds that does not include Recovery funds (as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5) for a subaward to an entity (see definitions in paragraph e. of this award term).
2. Where and when to report.
 - i. You must report each obligating action described in paragraph a.1. of this award term to <http://www.fsrc.gov>.
 - ii. For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)
3. What to report. You must report the information about each obligating action that the submission instructions posted at <http://www.fsrc.gov> specify.

b. Reporting Total Compensation of Recipient Executives.

1. Applicability and what to report. You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if—
 - i. the total Federal funding authorized to date under this award is \$25,000 or more;
 - ii. in the preceding fiscal year, you received—
 - (A) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
 - (B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
 - iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

2. Where and when to report. You must report executive total compensation described in paragraph b.1. of this award term:
 - i. As part of your registration profile at <http://www.ccr.gov>.
 - ii. By the end of the month following the month in which this award is made, and annually thereafter.
- c. Reporting of Total Compensation of Subrecipient Executives.
 1. Applicability and what to report. Unless you are exempt as provided in paragraph d. of this award term, for each first-tier subrecipient under this award, you shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if—
 - i. in the subrecipient's preceding fiscal year, the subrecipient received—
 - (A) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
 - (B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and
 - ii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)
 2. Where and when to report. You must report subrecipient executive total compensation described in paragraph c.1. of this award term:
 - i. To the recipient.
 - ii. By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (i.e., between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.
- d. Exemptions. If, in the previous tax year, you had gross income, from all sources, under \$300,000, you are exempt from the requirements to report: i. Subawards, and ii. The total compensation of the five most highly compensated executives of any subrecipient.
- e. Definitions. For purposes of this award term:
 1. Entity means all of the following, as defined in 2 CFR part 25:
 - i. A Governmental organization, which is a State, local government, or Indian tribe;
 - ii. A foreign public entity;

- iii. A domestic or foreign nonprofit organization;
 - iv. A domestic or foreign for-profit organization;
 - v. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.
2. Executive means officers, managing partners, or any other employees in management positions.
3. Subaward:
- i. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.
 - ii. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. __.210 of the attachment to OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations").
 - iii. A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.
4. Subrecipient means an entity that:
- i. Receives a subaward from you (the recipient) under this award; and
 - ii. Is accountable to you for the use of the Federal funds provided by the subaward.
5. Total compensation means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):
- i. Salary and bonus.
 - ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
 - iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
 - iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
 - v. Above-market earnings on deferred compensation which is not tax-qualified.
 - vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

c. Central Contractor Registration (CCR) and Universal Identifier requirements.

1. Requirement for Central Contractor Registration (CCR) Unless you are exempted from this requirement under 2 C.F.R. § 25.110, you as the recipient must maintain the currency of your information in the CCR until you submit the final financial report required under this award or receive the final payment, whichever is later. This requires that you review and update the information at least annually after the initial registration, and more frequently if required by changes in your information or another award term.
2. Requirement for Data Universal Numbering System (DUNS) Numbers If you are authorized to make subawards under this award, you:
 - i. Must notify potential subrecipients that no entity (see definition in paragraph C of this award term) may receive a subaward from you unless the entity has provided its DUNS number to you.
 - ii. May not make a subaward to an entity unless the entity has provided its DUNS number to you.
3. Definitions for purposes of this award term:
 - i. Central Contractor Registration (CCR) means the Federal repository into which an entity must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the System for Award Management Internet site (currently at <https://www.sam.gov/portal/public/SAM/>).
 - ii. Data Universal Numbering System (DUNS) number means the nine-digit number established and assigned by Dun and Bradstreet, Inc. (D&B) to uniquely identify business entities. A DUNS number may be obtained from D&B by telephone (currently 866-705-5711) or the Internet (currently at <http://fedgov.dnb.com/webform>).
 - iii. Entity, as it is used in this award term, means all of the following, as defined at 2 C.F.R. part 25, subpart C:
 - (A) A Governmental organization, which is a State, local government, or Indian Tribe;
 - (B) A foreign public entity;
 - (C) A domestic or foreign nonprofit organization;
 - (D) A domestic or foreign for-profit organization; and

(E) A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

iv. Subaward:

(A) This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.

(B) The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, *see* Sec. __.210 of the attachment to OMB Circular A-133, “Audits of States, Local Governments, and Non-Profit Organizations”).

(C) A subaward may be provided through any legal agreement, including an agreement that you consider a contract.

v. Subrecipient means an entity that:

(A) Receives a subaward from you under this award; and

(B) Is accountable to you for the use of the Federal funds provided by the subaward.

.16 Federal Financial Assistance Planning During a Funding Hiatus or Government Shutdown

This term sets forth initial guidance that will be implemented for Federal assistance awards in the event of a lapse in appropriations, or a government shutdown. The Grants Officer may issue further guidance prior to an anticipated shutdown.

- a. Unless there is an actual rescission of funds for specific grant obligations, recipients of Federal financial assistance awards for which funds have been obligated generally will be able to continue to perform and incur allowable expenses under the award during a funding hiatus. Recipients are advised that ongoing activities by Federal employees involved in grant administration (including payment processing) or similar operational and administrative work cannot continue when there is a funding lapse. Therefore, there may be delays, including payment processing delays, in the event of a shutdown.
- b. All award actions will be delayed during a government shutdown; if it appears that a recipient’s performance under a grant or cooperative agreement will require agency involvement, direction, or clearance during the period of a possible government shutdown, the Program Officer or Grants Officer, as appropriate, may attempt to provide such involvement, direction, or clearance prior to the shutdown or advise recipients that such

involvement, direction, or clearance will not be forthcoming during the shutdown. Accordingly, recipients whose ability to withdraw funds is subject to prior agency approval, which in general are recipients that have been designated high risk, recipients of construction awards, or are otherwise limited to reimbursements or subject to agency review, will be able draw funds down from the relevant Automatic Standard Application for Payment (ASAP) account only if agency approval is given and coded into ASAP prior to any government shutdown or closure. This limitation may not be lifted during a government shutdown. Recipients should plan to work with the Grants Officer to request prior approvals in advance of a shutdown wherever possible. Recipients whose authority to draw down award funds is restricted may decide to suspend work until the government reopens.

- c. The ASAP system should remain operational during a government shutdown. Recipients that do not require any grant office or agency approval to draw down advance funds from their ASAP accounts should be able to do so during a shutdown. The 30-day limitation on the drawdown of advance funds will still apply notwithstanding a government shutdown and advanced funds held for more than 30 days will have to be returned with interest.

APPENDIX A: Summary of Changes to the 2008 Standard Terms and Conditions

Section	Page	Summary of Changes
PREFACE	4	Administrative changes.
A. FINANCIAL REQUIREMENTS	4	No changes to heading.
.01 Financial Reports	4	<ul style="list-style-type: none"> A.01.a. Changed "Form SF-269" to the current "Form SF-425". A.01.b. Changed the preferred method of submission to electronic submission.
.02 Award Payments	4	<ul style="list-style-type: none"> A.02.b. Includes reference to the submission of Form SF-3881, "ACH Vendor Miscellaneous Payment Enrollment Form" to be able to receive payment via a Form SF-270 request.
.03 Federal and Non-Federal Sharing	5	<ul style="list-style-type: none"> A.03.b. Added a clarification on the record keeping requirement for cost-share.
.04 Budget Changes and Transfer of Funds among Categories	6	<ul style="list-style-type: none"> Added DOC-specific regulation cites for transfers among direct cost categories.
.05 Indirect Costs and Facilities and Administrative Costs	6	<ul style="list-style-type: none"> Change to title of heading to include both "indirect costs" and "F&A Costs." A.05. Changed "start date" to "award date" for consistency with regulations and existing DOC policy. A.05.a. Changed "Indirect Costs" to "Facilities and Administrative Costs" in line with the regulations. A.05.c. Updated "cognizant Federal agency" section to reflect OMB guidance; added a reference to the "Commercial Organization" regulations at 48 C.F.R. Part 42; and updated the link to the DOL cite. A.05.f. Revisions to allocable indirect cost reimbursement.
.06 Incurring Costs or Obligating Federal Funds beyond the Expiration Date	9	<ul style="list-style-type: none"> A.06. Change "award period" to "project period" for consistency with regulations and existing DOC policy. A.06.a. Added language stating that the Grants Officer may approve extensions beyond 90-day closeout period.
.07 Tax Refunds	9	Administrative changes.
B. PROGRAMMATIC REQUIREMENTS	9	No changes to heading.
.01 Performance (Technical) Reports	9	<ul style="list-style-type: none"> B.01.a. Change preferred form of report submission to electronic submission, and set default submission dates to correspond with Federal Financial Report submissions.
.02 Unsatisfactory Performance	10	No changes to the term.
.03 Programmatic Changes	10	<ul style="list-style-type: none"> B.03. Reports must be submitted to the Program Officer who forwards the request to the Grants Officer.
.04 Other Federal Awards with Similar Programmatic Activities	10	No changes to the term.
.05 Non-Compliance with Award Provisions	10	No changes to the term.
.06 Prohibition against Assignment by the Recipient	10	<ul style="list-style-type: none"> B.06. Clarified that the written approval must be from the Grants Officer.
.07 Disclaimer Provisions	11	<ul style="list-style-type: none"> B.07.a. Removed "other losses resulting in any way from the performance of this award or any" language to clarify that the disclaimer applies to the performance of the award and all subawards or subcontracts.
C. NON-DISCRIMINATION REQUIREMENTS	11	No changes to heading.

Section	Page	Summary of Changes
.01 Statutory Provisions	11	<ul style="list-style-type: none"> C.01.d. Added the new award term for the "Revised ADA Standards for Accessible Design for Construction Awards."
.02 Other Provisions	12	<ul style="list-style-type: none"> C.02.b. Provided additional explanation for LEP requirements.
.03 Title VII Exemption for Religious Organizations	13	No changes to the term.
D. AUDITS	13	No changes to heading.
.01 Organization-Wide, Program-Specific, and Project Audits	13	<ul style="list-style-type: none"> D.01.a. Change submission preference to electronic submission.
.02 Audit Resolution Process	14	<ul style="list-style-type: none"> D.02.b.5. Added language emphasizing that no other administrative appeals are available in DOC.
E. DEBTS	15	No changes to heading.
.01 Payment of Debts Owed the Federal Government	15	<ul style="list-style-type: none"> E.01. Corrected the citation for the debt collection procedures in the regs and clarified procedures.
.02 Late Payment Charges	16	<ul style="list-style-type: none"> E.02.a. Added links to the CVFR and Federal Register publication. E.02.b. Updated penalty charges information. E.02.c. Updated administrative charges information.
.03 Barring Delinquent Federal Debtors from Obtaining Federal Loans or Loan Insurance Guarantees	16	<ul style="list-style-type: none"> E.03. Added citation to new debt collection procedures regs.
.04 Effect of Judgment Lien on Eligibility for Federal Grants, Loans, or Programs	16	No changes to the term.
F. INDIVIDUAL BACKGROUND SCREENING	--	<ul style="list-style-type: none"> This section and related requirements are revoked and Form CD-346 is rescinded.
F. GOVERNMENTWIDE DEBARMENT AND SUSPENSION	16	<ul style="list-style-type: none"> Changed numbering of heading to reflect the removal of section "F." Individual Background Screening." This is now section "F." Changed citation to reflect the relocation of these procedures to 2 C.F.R. Part 1326.
G. DRUG-FREE WORKPLACE	17	<ul style="list-style-type: none"> Changed numbering of heading to reflect the removal of section "F." Individual Background Screening." This is now section "G." Corrected citations for the Drug-Free Workplace Act of 1988 and the "Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)."
H. LOBBYING RESTRICTIONS	17	<ul style="list-style-type: none"> Changed numbering of heading to reflect the removal of section "F." Individual Background Screening." This is now section "H."
.01 Statutory Provisions	17	<ul style="list-style-type: none"> Removed the word "generally" to accurately reflect the prohibition against using Federal funds for lobbying.
.02 Disclosure of Lobbying Activities	17	<ul style="list-style-type: none"> Added language to clarify that the Grants Officer is the individual who receives those forms.
I. CODES OF CONDUCT AND SUBAWARD, CONTRACT, AND SUBCONTRACT PROVISIONS	17	<ul style="list-style-type: none"> Changed numbering of heading to reflect the removal of section "F." Individual Background Screening." This is now section "I."
.01 Code of Conduct for Recipients	17	No changes to the term.
.02 Applicability of Award Provisions to Subrecipients	18	<ul style="list-style-type: none"> Added "and all associated terms and conditions" to the other requirements the recipient must include in awards to subrecipients. Administrative changes to terminology.
.03 Competition and Codes of Conduct for Subawards	18	No changes to this term

Section	Page	Summary of Changes
.04 Applicability of Provisions to Subawards, Contracts, and Subcontracts	19	<ul style="list-style-type: none"> Changed numbering of heading to reflect the removal of section "F." Individual Background Screening."
.05 Small Businesses, Minority Business Enterprises and Women's Business Enterprises	20	<ul style="list-style-type: none"> Changed heading to "Small Businesses, Minority Business Enterprises and Women's Business Enterprises" to accurately reflect the regs. Changed language in the term to reflect the heading change and track regs.
.06 Subaward and/or Contract to a Federal Agency	20	<ul style="list-style-type: none"> Old section J.06.b. Added the language: "The Grants Officer must forward all requests to the Federal Assistance Law Division in the Office of the Assistant General Counsel for Finance and Litigation for review prior to making the final determination. The Grants Officer will notify the recipient in writing of the final determination" to ensure clearance by legal counsel.
J. PROPERTY	20	<ul style="list-style-type: none"> Changed numbering of heading to reflect the removal of section "F." Individual Background Screening." This is now section "J."
.01 Standards	20	<ul style="list-style-type: none"> Added in citations to 2 C.F.R. Parts 14 and 24.
.02 Real and Personal Property	21	<ul style="list-style-type: none"> Changed section heading from "Real Property" to "Real and Personal Property." Substantial revisions to the section.
K. ENVIRONMENTAL REQUIREMENTS	21	<ul style="list-style-type: none"> Changed numbering of heading to reflect the removal of section "F." Individual Background Screening." This is now section "K."
.01 The National Environmental Policy Act (42 U.S.C. § 4321 <i>et seq.</i>)	22	<ul style="list-style-type: none"> Changed heading citation and clarification of NEPA requirements for recipients.
<u>NEW</u> .02 National Historic Preservation Act (16 U.S.C. § 470 <i>et seq.</i>)	22	<ul style="list-style-type: none"> Added in a term about the National Historic Preservation Act requirements for recipients.
.03 Executive Order 11988 ("Floodplain Management") and Executive Order 11990 ("Protection of Wetlands")	23	<ul style="list-style-type: none"> Changed numbering to reflect the new NHPA term, this is now K.03. Changed heading citation for clarity.
.04 Clean Air Act (42 U.S.C. § 7401 <i>et seq.</i>), Federal Water Pollution Control Act (33 U.S.C. § 1251 <i>et seq.</i>) (Clean Water Act), and Executive Order 11738 ("Providing for administration of the Clean Air Act and the Federal Water Pollution Control Act with respect to Federal contracts, grants or loans")	23	<ul style="list-style-type: none"> Changed numbering to reflect the new NHPA term, this is now K.04. Changed heading citation for clarity. Added link to the EPA List of Violating Facilities. Updated C.F.R. citation.
.05 The Flood Disaster Protection Act (42 U.S.C. § 4002 <i>et seq.</i>)	23	<ul style="list-style-type: none"> Changed numbering to reflect the new NHPA term, this is now K.05. Updated heading citation.
.06 The Endangered Species Act (16 U.S.C. § 1531 <i>et seq.</i>)	23	<ul style="list-style-type: none"> Changed numbering to reflect the new NHPA term, this is now K.06. Updated heading citation.
.07 The Coastal Zone Management Act (16 U.S.C. § 1451 <i>et seq.</i>)	23	<ul style="list-style-type: none"> Changed numbering to reflect the new NHPA term, this is now K.07. Updated heading citation.
.08 The Coastal Barriers Resources Act (16 U.S.C. § 3501 <i>et seq.</i>)	23	<ul style="list-style-type: none"> Changed numbering to reflect the new NHPA term, this is now K.08. Clarified that only in certain circumstances can Federal funding be provided for actions within a Coastal Barrier System.
.09 The Wild and Scenic Rivers Act (16 U.S.C. § 1271 <i>et seq.</i>)	23	<ul style="list-style-type: none"> Changed numbering to reflect the new NHPA term, this is now K.09. Updated heading citation.
.10 The Safe Drinking Water Act of 1974, as amended, (42 U.S.C. § 300f <i>et seq.</i>)	22	<ul style="list-style-type: none"> Changed numbering to reflect the new NHPA term, this is now K.10. Updated heading citation.

Section	Page	Summary of Changes
.11 The Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.)	24	<ul style="list-style-type: none"> Changed numbering to reflect the new NHPA term, this is now K.11. Updated heading citation.
.12 The Comprehensive Environmental Response, Compensation, and Liability Act (Superfund) (42 U.S.C. § 9601 et seq.) and the Community Environmental Response Facilitation Act (41 U.S.C. § 11001 et seq.)	24	<ul style="list-style-type: none"> Changed numbering to reflect the new NHPA term, this is now K.12. Updated heading citation. Added language specifying reporting requirements.
.13 Executive Order 12898 (“Environmental Justice in Minority Populations and Low Income Populations”)	24	<ul style="list-style-type: none"> Changed numbering to reflect the new NHPA term, this is now K.13. Updated heading citation.
L. MISCELLANEOUS REQUIREMENTS	24	<ul style="list-style-type: none"> Changed numbering of heading to reflect the removal of section “F.” Individual Background Screening.” This is now section “L.”
.01 Criminal and Prohibited Activities	24	<ul style="list-style-type: none"> Old M.01.d. Updated citations and added language expressly stating that “The Copeland “Anti-Kickback” Act also applies to contractors and subcontractors pursuant to 40 U.S.C. § 3145.”
.02 Foreign Travel	25	<ul style="list-style-type: none"> Updated section on the bilateral or multilateral treaty exception and links to Department of State website for specific agreements. Added language clarifying that the Fly America Act applies to all award funds, not only Federal award funds.
.03 American-Made Equipment and Products	26	No changes to term.
.04 Intellectual Property Rights	26	<ul style="list-style-type: none"> L.04.a.1(a). Updates to the "Recipient" section: The recipient's ownership rights are subject to the Government's nonexclusive, [added] "nontransferable, irrevocable," paid-up license and other rights. (b). Updates the "Department" section to add that DOC may request assignment of all rights when a recipient "elects to not retain title own, fails to disclose the invention to the agency within the required time limits." M.04.a.2. Added link to iEdison website and added information about how a recipient may obtain a waiver of the electronic submission requirement.
.05 Increasing Seat Belt Use in the United States	28	No changes to heading or term.
.06 Research Involving Human Subjects	28	No changes to heading or term.
.07 Federal Employee Expenses	29	<ul style="list-style-type: none"> Removed "unless specifically approved in the terms of the award" for clarify the term to emphasize that recipients cannot pay for federal employee expenses.
M.08 Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects.	--	<ul style="list-style-type: none"> Removed this term because the relevant part of the authorizing Executive Order was revoked by a later Executive Order.
.08 Minority Serving Institutions Initiative	29	<ul style="list-style-type: none"> Changed numbering to reflect the removal of old M.08. This is now L.08. Updated references to Executive Orders to reflect the current authorities.
.09 Research Misconduct	29	<ul style="list-style-type: none"> Changed numbering to reflect the removal of old M.08. This is now L.09. Added additional explanation of recipient responsibilities for preventing, detecting and investigating allegations of research misconduct.

Section	Page	Summary of Changes
.10 Publications, Videos and Acknowledgment of Sponsorship	30	<ul style="list-style-type: none"> Changed numbering to reflect the removal of old M.08. This is now L.10. Substantive changes to this term include expanding the term to apply to all Federally-funded projects, rather than only "Federally funded research." Updated disclaimer requirement.
.11 Care and Use of Live Vertebrate Animals	30	<ul style="list-style-type: none"> Changed numbering to reflect the removal of old M.08. This is now L.11.
.12 Homeland Security Presidential Directive 12	31	<ul style="list-style-type: none"> Changed numbering to reflect the removal of old M.08. This is now L.12. Added a term that recipients must include in all subawards and subcontracts (at all tiers) performing work under the award when the subaward recipient or contractor is required to have routine physical access to a Federally-controlled facility or routine access to a Federally-controlled information system. <p>Added language allowing the Grants Officer to delay final payment under an award if the subrecipient or contractor fails to comply with the requirements listed in the term.</p>
.13 Compliance with Department of Commerce Bureau of Industry and Security Export Administration Regulations	32	<ul style="list-style-type: none"> Changed numbering to reflect the removal of old M.08. This is now L.13. Old section M.14.a. Updated term to reflect that it applies when the financial assistance involves access to "export-controlled items" rather than "export-controlled information or technology." Old section M.14.c. Updated the definition of "Export-controlled items" and "Deemed Export/Reexport." M.14.f. Added a paragraph on license requirement under EAR. M.14.h. Added disclaimers that compliance with this term does not satisfy any legal obligations the recipient may have regarding items that may be subject to export controls administered by other Agencies (e.g. ITAR).
.14 The Trafficking Victims Protection Act of 2000 (22 U.S.C. 7104(g)), as amended, and the implementing regulations at 2 C.F.R. part 175	33	<ul style="list-style-type: none"> Changed numbering to reflect the removal of old M.08. This is now L.14. Added name of the act for clarity to the term. Added citation to regs and added the term from 2 C.F.R. § 175.15(b).
.15 The Federal Funding Accountability and Transparency Act of 2006 (Pub. L. No. 109-282, 31 USCA § 6101 note)	35	<ul style="list-style-type: none"> Changed numbering to reflect the removal of old M.08. This is now L.15. Old section M.14.a. Updated term addressing the "Searchable Website" requirement. Old section M.14.b. Added the "Reporting Subawards and Executive Compensation" term required in 2 C.F.R. Part 170. Old section M.14.c. Added CCR and Universal Identifier Requirements terminology.
<u>NEW</u> L.17 Federal Financial Assistance Planning During a Funding Hiatus or Government Shutdown	40	<ul style="list-style-type: none"> Added new term addressing procedures for "Federal Financial Assistance Planning During a Funding Hiatus or Government Shutdown."

NOAA Administrative Standard Award Conditions

On September 14, 2010 the Office of Management And Budget issued interim final guidance to agencies to establish requirements for Federal financial assistance applicants, recipients, and subrecipients that are necessary for the implementation of the Federal Funding Accountability and Transparency Act of 2006, hereafter referred to as ``the Transparency Act" or ``the Act". This interim final guidance provided standard wording for an award term that each agency must include in grant and cooperative agreement awards it makes on or after October 1, 2010, to require recipients to report information about first-tier subawards and executive compensation under only those awards. This implementation of the requirement for reporting of subawards and executive compensation under Federal assistance awards parallels the implementation for subcontracts and executive compensation under Federal procurement contracts, which is in the Federal Acquisition Regulation. This is a new requirement and the language is located in section D of these Administrative Standard Award Conditions.

As you may know, during the Federal Government's Fiscal Year 2006, NOAA implemented NOAA Grants Online. Grants Online is a premier Federal solution for full life-cycle grants management processing. Grants Online allows recipients to: Accept awards electronically, manage user roles for individuals within their organization, submit post-award action requests, financial reports, and performance/progress reports. Grants Online operates in a web environment, and can be accessed anywhere at any time, provided that you have Internet access. You will be required to use an Internet browser to log in and to use Grants Online. **Internet Explorer** is the preferred browser for **PC users**; **FireFox** is the preferred browser for **MAC users**. No software is required for installation. Logins and passwords are required. If you do not have a password, you can contact the Grants Online Help Desk for assistance in obtaining your login credentials.

For more information, e-mail GrantsOnline.HelpDesk@noaa.gov or call the Help Desk at 301-444-2112 or toll free at 1-877-662-2478 between the hours of 8:00 a.m. and 6:00 p.m. Eastern Time Monday through Friday excluding Federal holidays.

A. Award Payments – ASAP Enrollment

Your award payments will be made through electronic funds transfers using the U.S. Department of the Treasury's Automated Standard Application for Payments (ASAP) system. Recipients must enroll in ASAP system by first submitting an Organization Profile Change Request via Grants Online, which will include the following requirements:

1. EIN#
2. DUNS#
3. Name of Organization
4. Type of Organization (i.e. Non-profit, For Profit, State etc.)
5. Address
6. Point of Contact
7. Title
8. Point of Contact's Email Address
9. Phone Number

NOAA Administrative Standard Award Conditions

Please refer to the NOAA website at:

http://www.corporateservices.noaa.gov/grantsonline/Process%20Maps/Award_and_Post_Award_OverviewOnly.pdf for additional information.

B. Financial Reports

Federal Financial Reports (SF-425) are to be completed in NOAA's Grants Online system. Grants Online will notify your organization via email when your reports are available for completion and submission through the Grants Online system. The status of all reports can be seen under "Associated Documents" under the Grants File.

To complete a report, login to NOAA Grants Online at <https://www.GrantsOnline.noaa.gov>, search for the award and navigate to the Grants File overview page. Find the report near the bottom of the page and click on the link to the report to complete the report. For multiple awards that require Federal Financial Reports (SF-425) covering the same period, you may create and submit a multi-award SF-425 from the "Awards" tab. For additional assistance with Grants Online, please review the Recipient Quick Reference Guide available at <http://rdc.noaa.gov/~GrantsOnline/Training>. This site also has additional detailed recipient assistance material. If you are having problems with accessing Grants Online, please contact the Grants Online Help Desk at 1-877-662-2478 or GrantsOnline.HelpDesk@noaa.gov.

1. Federal Financial Report (SF-425) - (final report only)
 - a. A final comprehensive Federal Financial Report must be submitted, within 90 days after award expiration. The report shall cover the entire project period from the start date through the end date of the original award, or approved extended end date of the award, and must include the cumulative total of indirect costs charged to the award.
2. Federal Financial Report (SF-425) - Due semi-annually; reported under the "Federal Cash" line of the report. (This report replaces the SF 272, Cash Transaction Report)
 - a. The SF-425 shall be submitted on a semi-annual basis. If the recipient is reporting on more than one NOAA grant and/or agreement, then the SF-425 attachment must be used.
 - b. Interim semi-annual Federal Financial Reports (SF-425) are due no later than 30 days after the semi-annual reporting periods ending March 31 and September 30 for the entire project period of the award.
 - c. A final Federal Financial Report (SF 425) is due within 90 days after award expiration. The report shall cover the last semi-annual reporting period ending on September 30 or March 31, or a portion thereof, based on the end date or approved extended end date of the award.
 - d. The SF-425 is due for recipients using the Department of Treasury Automated Standard Application for Payments (ASAP) system for payment. If converting to

NOAA Administrative Standard Award Conditions

ASAP during the course of the Award, the SF-425 forms will be due as described above starting with the ASAP conversion date

3. Request for Advance or Reimbursement (SF-270)

- a. The SF-270 shall NOT be submitted by recipients using the Department of Treasury ASAP system unless specifically directed by a Special Award Condition.
- b. The SF-270 shall be submitted using the NOAA Grants Online system, as reimbursements are necessary for the financial management of the award.
- c. Semi-annual and final Federal Financial Reports (SF-425) are not required if the SF-270 is used.

C. Performance/Progress Reports

Performance/Progress Reports are to be completed in NOAA's Grants Online System. The Grants Online System will notify your organization through email, when your reports are available for completion and submission through NOAA Grants Online. Recipients are responsible for ensuring all personnel listed on an award have a current email address. The status of reports can be seen under Associated Documents under the Grant File.

To complete your report, login to NOAA Grants Online at <https://www.GrantsOnline.noaa.gov>, search for the award and navigate to the Grants File overview page. Then find the report near the bottom of the page and click on the link to the report to complete it. You must attach the report document for submission, or in the rare cases where there is very little to report, fill out the report in the report comments section. The Federal Program Officer is the authority on the acceptable form and content of Project Progress Reports. For additional assistance with Grants Online, please review the Recipient Quick Reference Guide available at <http://rdc.noaa.gov/~GrantsOnline/Training>. This site also has additional detailed Recipient assistance material. If you are having problems with your access to Grants Online, please contact the Grants Online Help Desk at 1-877-662-2478 or GrantsOnline.HelpDesk@noaa.gov.

- a. Frequency: Performance reports are due on a semi-annual basis, unless otherwise specified in an award condition, no later than 30 days following the end of each six (6) month period from the start date of the original award. The last semi-annual performance report is required. The final report, which summarizes activities conducted during the entire award must be submitted within 90 days following the end date of the project.

D. Reporting Subawards and Executive Compensation.

- a. **Reporting of first-tier subawards. (Applies only to grant/cooperative agreement awards issued with a new NOAA fiscal year 2011 award number)**

1. Applicability. Unless you are exempt as provided in paragraph d. of this award term, you must report each action that obligates \$25,000 or more in Federal funds that does not include Recovery

NOAA Administrative Standard Award Conditions

funds (as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5) for a subaward to an entity (see definitions in paragraph e. of this award term).

2. Where and when to report.

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

ii. For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)

3. What to report. You must report the information about each obligating action that the submission instructions posted at <http://www.fsr.gov> specify.

b. Reporting Total Compensation of Recipient Executives.

1. Applicability and what to report. You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if--

i. the total Federal funding authorized to date under this award is \$25,000 or more;

ii. in the preceding fiscal year, you received--

(A) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

(B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

2. Where and when to report. You must report executive total compensation described in paragraph b.1. of this award term:

i. As part of your registration profile at <http://www.ccr.gov>.

ii. By the end of the month following the month in which this award is made, and annually thereafter.

NOAA Administrative Standard Award Conditions

c. Reporting of Total Compensation of Subrecipient Executives.

1. Applicability and what to report. Unless you are exempt as provided in paragraph d. of this award term, for each first-tier subrecipient under this award, you shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if—

i. in the subrecipient's preceding fiscal year, the subrecipient received--

(A) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

(B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and

ii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/excomp.htm>).

2. **Where and when to report.** You must report subrecipient executive total compensation described in paragraph c.1. of this award term:

i. To the recipient.

ii. By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (i.e., between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.

d. Exemptions

If, in the previous tax year, you had gross income, from all sources, under \$300,000, you are exempt from the requirements to report:

i. Subawards, and

ii. The total compensation of the five most highly compensated executives of any subrecipient.

e. Definitions.

For purposes of this award term:

1. Entity means all of the following, as defined in 2 CFR part 25:

NOAA Administrative Standard Award Conditions

- i. A Governmental organization, which is a State, local government, or Indian tribe;
 - ii. A foreign public entity;
 - iii. A domestic or foreign nonprofit organization;
 - iv. A domestic or foreign for-profit organization;
 - v. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.
- 2. Executive means officers, managing partners, or any other employees in management positions.
- 3. Subaward means:
 - i. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.
 - ii. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. ---- .210 of the attachment to OMB Circular A-133, ``Audits of States, Local Governments, and Non-Profit Organizations").
 - iii. A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.
- 4. Subrecipient means an entity that:
 - i. Receives a subaward from you (the recipient) under this award; and
 - ii. Is accountable to you for the use of the Federal funds provided by the subaward.
- 5. Total compensation means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):
 - i. Salary and bonus.
 - ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
 - iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
 - iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.

NOAA Administrative Standard Award Conditions

- v. Above-market earnings on deferred compensation which is not tax-qualified.
- vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

E. Post Award Action Requests for Non-Construction Awards

All Post Award Action requests must be completed in Grants Online. NOAA Grants Online provides the ability for Recipients to submit the different Award Action Requests. Each request is described below with specific guidance.

General Guidance and NOAA Business Rules

- NOAA requires all Award Action Requests to be approved by a ~~Recipient~~ "Recipient Authorized Representative." Grants Online enforces this business rule by routing all requests through the Recipient Authorized Representative(s) for submission to NOAA.
- An Award End Date may ONLY be extended through:
 - A funded amendment through an application (SF-424)
 - A No-Cost Extension - Prior Approval Waived (Research Terms and Conditions)
 - A No-Cost Extension - Prior Approval Required
- The Extension to Closeout is the only Award Action Request that may be initiated after the Award End Date.
 - An Extension to Closeout may only be requested within the 90-day closeout period (90 days after the award end date). The closeout period can be extended only once for a maximum of 60 days. .
- A No-Cost Extension - Prior Approval Waived (Research Terms and Conditions) must be submitted to NOAA 10 or more days prior to the award end date.
 - Grants Online automatically enforces this business rule.
- A No-Cost Extension - Prior Approval Required is required to be submitted to NOAA 30 or more days prior to the award end date.
 - Recipients that are allowed Prior Approval Waived (Research Terms and Conditions) must exercise this no-cost extension, before requesting a no-cost extension Prior Approval Required. .
 - Grants Online does not enforce this business rule. Enforcement is at the discretion of the Grants Officer.
- The "Other" Award Action Request may or may not produce an amendment. Use this Award Action Request if you have a request that does not fit under any other category. Please work

NOAA Administrative Standard Award Conditions

with your Federal Program Officer to determine if you should submit the "Other" Award Action Request. In a few cases, the recipient will not have to submit an "Other" Award Action Request. An email request from the recipient to the Federal Program Officer, and the approval of the content of that email by the Program Officer, who in turn, submits it to the Grants Officer is sufficient. The approval of the request ultimately lies with the Grants Officer. This email request and attendant correspondence is always attached to the Grants File as evidence of the transaction.

Grants Online Processing Guidance for list of Award Action Requests (Award Action Requests are listed on the following pages)

From the [Grants Online Recipient Quick Reference Guide](#) :

1. Click the "Award" tab.
2. Click the "Search" or the "Search Award" link. The "Search Award" page is displayed.
3. Click the "Search" button on the "Search Award" page. When your search results populate, click the award number for which you are submitting your AAR.
4. On the "Grants File" launch page, select the "Create Award Action Request" action from the action dropdown menu then click the "Submit" button.
5. The "Award Action Request Index" page is displayed with the available AARs. Click the link to the AAR that you wish to submit. The requested page will be displayed for you to complete. Enter the required fields and click the "Save" button.
6. The AAR page is re-displayed with the attachment link and other fields. You can upload documents. After completing the required information, click the "Save and Return to Main" button. Another message will display where you can confirm your request and start workflow, click the "Yes" button.
7. A review task is sent to your "Task" inbox for this request. Follow the steps listed under the Processing a Task in [this document](#). The review task will go first to the creator of the document and then to the Recipient Authorized Representative(s) in the organization. If you have the role of "Recipient Authorized Representative" you will have to submit the request to NOAA, thus you will have processed two tasks.

List of Award Action Requests Listed below is each kind of Award Action Request in the same relative location as it is found on the Award Action Request selection page in Grants Online. Those marked with an asterisk always require an amendment. The others generally do not, but might if any Special Award Conditions are associated with the request approval. * No Cost Extension – Prior Approval Required	No Cost Extension - Prior Approval Waived (Research Terms and Conditions)
Extension to Close Out	Reprogram or Rebudget
* Change in Scope	Equipment Purchase
* Transfer of Award	Foreign Travel
Change in Principal Investigator	Sole Source Contract
Organization Profile Change Request	Other
Change in Key Person Specified in the Application	Absence of more than 3 months or 25% by project director or PI
Satisfied Special Award Conditions	Inclusion of cost that require prior approval based

NOAA Administrative Standard Award Conditions

	on cost principles
Transfer of funds allotted for training to other categories of expenses	* Sub award, transfer or contracting out of any work under the award if not described in the approved application
Pre-Award Cost	*Termination for Convenience
ASAP Drawdown Request for Broadband Technology Opportunities Program (BTOP) Only	

Special Award Conditions

Award Number: NA14NMF4830100

Amendment Number: 0

1) New Award SAC

This award number NA14NMF4830100, to HOUSING TRUST FUND CORPORATION, supports the work described in the Recipient's proposal entitled New York's Sandy-impacted Fishery Grant Relief Program dated 04/28/2014, and revisions dated 04/29/2014, 05/09/2014, 05/16/2014, and 07/03/2014 which are incorporated into the award by reference. Where the terms of the award and proposal differ, the terms of the award shall prevail.

2) NOAA's Data Sharing Policy

Environmental data and information collected and/or created under NOAA grants/cooperative agreements must be made visible, accessible, and independently understandable to general users, free of charge or at minimal cost, in a timely manner (typically no later than two (2) years after the data are collected or created), except where limited by law, regulation, policy or security requirements. The Data/Information Sharing Plan (and any subsequent revisions or updates) must be made publically available at the time of award and, thereafter, will be posted with published data. Failing to share environmental data and information in accordance with the submitted Data/Information Sharing Plan may lead to disallowed costs and be considered by NOAA when making future award decision. If your proposed activities do not generate any environmental data, your application is still required to have a data sharing plan. Such a data sharing plan could include the statement that "this project will not generate any environmental data". More information about the Data Sharing Policy is available on NOAA's Environmental data Management Committee website at: <http://www.nosc.noaa.gov/EDMC/PD.DSP.php>

3) Federal Funding Accountability and Transparency Act Reporting

The Federal Funding Accountability and Transparency Act of 2006, includes a requirement for awardees of applicable Federal grants to report information about first-tier sub-awards and executive compensation under Federal assistance awards issued in Fiscal Year 2011 or later. All awardees of applicable grants and cooperative agreements are required to report to the Federal Sub-award Reporting System (FSRS) available at www.FSRS.gov on all sub-awards over \$25,000.

4) 24 Month Requirement

Unless an OMB waiver has been granted, all projects funded under the Disaster Relief Appropriations Act (DRA) of 2013 shall not exceed 24 months. In addition, all work and the expenditure of funds shall be completed within the 24 month period following the effective date of the award.

5) Performance/Progress Reports

Interim Performance/Progress Reports are due on the same frequency as the Federal Financial Report. A comprehensive Performance/Progress Report must be submitted, within 90 days after award expiration. The report shall cover the entire

project period from the start date through the end date of the original award, or approved extended end date of the award.

Basic information that should be in all report submissions includes the project title, award number, dates of the award period, dates of the reporting period, and the name(s) of the grantee and the principal investigator. Inclusion of media such as photography and statistics (tables, graphs, etc.) to help document programmatic activities in report submissions is also encouraged. Pertinent, captioned photographs of project activities are requested, and may be included within the progress report document submitted via Grants Online.

Quarterly progress reports should describe the tasks scheduled for the reporting period (from the proposal and amendments) and the tasks that were actually accomplished in the period. The report should also explain any special problems or differences between the scheduled and accomplished work.

The final, comprehensive report should include an "Executive Summary" of the project accomplishments which briefly and succinctly summarizes the final report for website or publication use. Limit this summary to no more than one page. The suggested format for the final report is:

- a. Report title, author, organization, grant number, date
- b. Executive Summary: a brief and succinct summary of the final report
- c. Purpose:
 - Detailed description of problem or impediment that was addressed by the project.
 - Objectives of the project.
- d. Approach: - Detailed description of the work that was performed.
 - Project management: list individuals and/or organizations actually performing the work and how it was done.
- e. Findings:
 - Actual accomplishments and findings.
 - If significant problems developed which resulted in less than satisfactory or negative results, these should be discussed.
 - Description of need for additional work, if any.
- f. Evaluation:
 - Describe the extent to which the project goals and objectives were attained. This description should address the following: Were the goals and objectives attained? How? If not, why? Were modifications made to the goals and objectives? If so, explain.
 - Dissemination of project results: Explain, in detail, how the project's results have been and will be disseminated.

4. Publications, Videos and Acknowledgement of Sponsorship: Publication of the results or findings of the funded award activities in appropriate professional journals, outreach materials, or press releases, and production of video or other media is encouraged as an important method of recording and reporting scientific information. These are also constructive means to expand access to federally funded research. The recipient is required to submit a copy of any publication to the funding agency, and when releasing information related to a funded project, include a statement that the project or effort undertaken was or is sponsored by NOAA Fisheries Service. The recipient is also responsible for assuring that every publication of material (including Internet sites and videos) based on or developed under an award, except scientific articles or papers appearing in scientific, technical or professional journals, contains the following

acknowledgement and disclaimer: “This project received funding under award [number] from NOAA Fisheries Service, under the Disaster Relief Appropriations Act. The statements, findings, conclusions, and recommendations are those of the author(s) and do not necessarily reflect the views of NOAA Fisheries.”

The final report is a public document and may be posted, partially or in its entirety, on the NOAA Fisheries website.

6) Quarterly Reporting of Financial Reports

Federal Financial Report (SF-425, Full Financial Report) - Interim quarterly Federal Financial Reports are due no later than 30 days after the quarterly reporting periods ending March 31, June 30, September 30, and December 31 for the entire project period of the award.

Federal Financial Report (SF-425, Final Full Report) - A comprehensive Federal Financial Report must be submitted, within 90 days after award expiration. The report shall cover the entire project period from the start date through the end date of the original award, or approved extended end date of the award, and must include the cumulative total of indirect costs charged to the award.

7) Performance Progress Reports

Performance/Progress Reports - Interim Performance/Progress Reports are due on the same frequency as the Federal Financial Report. A comprehensive Performance/Progress Reports must be submitted, within 90 days after award expiration. The report shall cover the entire project period from the start date through the end date of the original award, or approved extended end date of the award.

Circular No. A-133

Revised to show changes published in the *Federal Register* June 27, 2003
Audits of States, Local Governments, and Non-Profit Organizations

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

SUBJECT: Audits of States, Local Governments, and Non-Profit Organizations

1. Purpose. This Circular is issued pursuant to the Single Audit Act of 1984, P.L. 98-502, and the Single Audit Act Amendments of 1996, P.L. 104-156. It sets forth standards for obtaining consistency and uniformity among Federal agencies for the audit of States, local governments, and non-profit organizations expending Federal awards.

2. Authority. Circular A-133 is issued under the authority of sections 503, 1111, and 7501 *et seq.* of title 31, United States Code, and Executive Orders 8248 and 11541.

3. Rescission and Supersession. This Circular rescinds Circular A-128, "Audits of State and Local Governments," issued April 12, 1985, and supersedes the prior Circular A-133, "Audits of Institutions of Higher Education and Other Non-Profit Institutions," issued April 22, 1996. For effective dates, see paragraph 10.

4. Policy. Except as provided herein, the standards set forth in this Circular shall be applied by all Federal agencies. If any statute specifically prescribes policies or specific requirements that differ from the standards provided herein, the provisions of the subsequent statute shall govern.

Federal agencies shall apply the provisions of the sections of this Circular to non-Federal entities, whether they are recipients expending Federal awards received directly from Federal awarding agencies, or are subrecipients expending Federal awards received from a pass-through entity (a recipient or another subrecipient).

This Circular does not apply to non-U.S. based entities expending Federal awards received either directly as a recipient or indirectly as a subrecipient.

5. Definitions. The definitions of key terms used in this Circular are contained in §___ .105 in the Attachment to this Circular.

6. Required Action. The specific requirements and responsibilities of Federal agencies and non-Federal entities are set forth in the Attachment to this Circular. Federal agencies making awards to non-Federal entities, either directly or indirectly, shall adopt the language in the Circular in codified regulations as provided in Section 10 (below), unless different provisions are required by Federal statute or are approved by the Office of Management and Budget (OMB).

7. OMB Responsibilities. OMB will review Federal agency regulations and implementation of this Circular, and will provide interpretations of policy requirements and assistance to ensure uniform, effective and efficient implementation.

8. Information Contact. Further information concerning Circular A-133 may be obtained by contacting the Financial Standards and Reporting Branch, Office of Federal Financial Management, Office of Management and Budget, Washington, DC 20503, telephone (202) 395-3993.

9. Review Date. This Circular will have a policy review three years from the date of issuance.

10. Effective Dates. The standards set forth in §___.400 of the Attachment to this Circular, which apply directly to Federal agencies, shall be effective July 1, 1996, and shall apply to audits of fiscal years beginning after June 30, 1996, except as otherwise specified in §___.400(a).

The standards set forth in this Circular that Federal agencies shall apply to non-Federal entities shall be adopted by Federal agencies in codified regulations not later than 60 days after publication of this final revision in the *Federal Register*, so that they will apply to audits of fiscal years beginning after June 30, 1996, with the exception that §___.305(b) of the Attachment applies to audits of fiscal years beginning after June 30, 1998. The requirements of Circular A-128, although the Circular is rescinded, and the 1990 version of Circular A-133 remain in effect for audits of fiscal years beginning on or before June 30, 1996.

The revisions published in the *Federal Register* June 27, 2003, are effective for fiscal years ending after December 31, 2003, and early implementation is not permitted with the exception of the definition of *oversight agency for audit* which is effective July 28, 2003.

Augustine T. Smythe
Acting Director

Attachment

PART __ --AUDITS OF STATES, LOCAL GOVERNMENTS, AND NON-PROFIT ORGANIZATIONS

Subpart A--General

Sec.

- __ .100 Purpose.
- __ .105 Definitions.

Subpart B--Audits

- __ .200 Audit requirements.
- __ .205 Basis for determining Federal awards expended.
- __ .210 Subrecipient and vendor determinations.
- __ .215 Relation to other audit requirements.
- __ .220 Frequency of audits.
- __ .225 Sanctions.
- __ .230 Audit costs.
- __ .235 Program-specific audits.

Subpart C--Auditees

- __ .300 Auditee responsibilities.
- __ .305 Auditor selection.
- __ .310 Financial statements.
- __ .315 Audit findings follow-up.
- __ .320 Report submission.

Subpart D--Federal Agencies and Pass-Through Entities

- __ .400 Responsibilities.
- __ .405 Management decision.

Subpart E--Auditors

- __ .500 Scope of audit.
- __ .505 Audit reporting.
- __ .510 Audit findings.
- __ .515 Audit working papers.
- __ .520 Major program determination.
- __ .525 Criteria for Federal program risk.
- __ .530 Criteria for a low-risk auditee.

Appendix A to Part __ - Data Collection Form (Form SF-SAC).

Appendix B to Part __ - Circular A-133 Compliance Supplement.

Subpart A--General
§ __.100 Purpose.

This part sets forth standards for obtaining consistency and uniformity among Federal agencies for the audit of non-Federal entities expending Federal awards.

§ __.105 Definitions.

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

Auditor means an auditor, that is a public accountant or a Federal, State or local government audit organization, which meets the general standards specified in generally accepted government auditing standards (GAGAS). The term auditor does not include internal auditors of non-profit organizations.

Audit finding means deficiencies which the auditor is required by § __.510(a) to report in the schedule of findings and questioned costs.

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

Cluster of programs means a grouping of closely related programs that share common compliance requirements. The types of clusters of programs are research and development (R&D), student financial aid (SFA), and other clusters. "Other clusters" are as defined by the Office of Management and Budget (OMB) in the compliance supplement or as designated by a State for Federal awards the State provides to its subrecipients that meet the definition of a cluster of programs. When designating an "other cluster," a State shall identify the Federal awards included in the cluster and advise the subrecipients of compliance requirements applicable to the cluster, consistent with § __.400(d)(1) and § __.400(d)(2), respectively. A cluster of programs shall be considered as one program for determining major programs, as described in § __.520, and, with the exception of R&D as described in § __.200(c), whether a program-specific audit may be elected.

Cognizant agency for audit means the Federal agency designated to carry out the responsibilities described in § __.400(a).

Compliance supplement refers to the Circular A-133 Compliance Supplement, included as Appendix B to Circular A-133, or such documents as OMB or its designee may issue to replace it. This document is available from the Government Printing Office, Superintendent of Documents, Washington, DC 20402-9325.

Corrective action means action taken by the auditee that:

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

Federal agency has the same meaning as the term agency in Section 551(1) of title 5, United States Code.

Federal award means Federal financial assistance and Federal cost-reimbursement contracts that non-Federal entities receive directly from Federal awarding agencies or indirectly from pass-through entities. It does

not include procurement contracts, under grants or contracts, used to buy goods or services from vendors. Any audits of such vendors shall be covered by the terms and conditions of the contract. Contracts to operate Federal Government owned, contractor operated facilities (GOCOs) are excluded from the requirements of this part.

Federal awarding agency means the Federal agency that provides an award directly to the recipient.

Federal financial assistance means assistance that non-Federal entities receive or administer in the form of grants, loans, loan guarantees, property (including donated surplus property), cooperative agreements, interest subsidies, insurance, food commodities, direct appropriations, and other assistance, but does not include amounts received as reimbursement for services rendered to individuals as described in § ____.205 (h) and § ____.205 (i).

Federal program means:

(1) All Federal awards to a non-Federal entity assigned a single number in the CFDA.

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

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

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

(ii) Student financial aid (SFA); and

(iii) "Other clusters," as described in the definition of cluster of programs in this section.

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

Generally accepted accounting principles has the meaning specified in generally accepted auditing standards issued by the American Institute of Certified Public Accountants (AICPA).

Indian tribe means any Indian tribe, band, nation, or other organized group or community, including any Alaskan Native village or regional or village corporation (as defined in, or established under, the Alaskan Native Claims Settlement Act) that is recognized by the United States as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Internal control means a process, effected by an entity's management and other personnel, designed to provide reasonable assurance regarding the achievement of objectives in the following categories:

(1) Effectiveness and efficiency of operations;

(2) Reliability of financial reporting; and

(3) Compliance with applicable laws and regulations.

Internal control pertaining to the compliance requirements for Federal programs (Internal control over Federal programs) means a process--effected by

an entity's management and other personnel--designed to provide reasonable assurance regarding the achievement of the following objectives for Federal programs:

- (1) Transactions are properly recorded and accounted for to:
 - (i) Permit the preparation of reliable financial statements and Federal reports;
 - (ii) Maintain accountability over assets; and
 - (iii) Demonstrate compliance with laws, regulations, and other compliance requirements;
- (2) Transactions are executed in compliance with:
 - (i) Laws, regulations, and the provisions of contracts or grant agreements that could have a direct and material effect on a Federal program; and
 - (ii) Any other laws and regulations that are identified in the compliance supplement; and
- (3) Funds, property, and other assets are safeguarded against loss from unauthorized use or disposition.

Loan means a Federal loan or loan guarantee received or administered by a non-Federal entity.

Local government means any unit of local government within a State, including a county, borough, municipality, city, town, township, parish, local public authority, special district, school district, intrastate district, council of governments, and any other instrumentality of local government.

Major program means a Federal program determined by the auditor to be a major program in accordance with § ____.520 or a program identified as a major program by a Federal agency or pass-through entity in accordance with § ____.215 (c) .

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

Non-Federal entity means a State, local government, or non-profit organization.

Non-profit organization means:

- (1) any corporation, trust, association, cooperative, or other organization that:
 - (i) Is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest;
 - (ii) Is not organized primarily for profit; and
 - (iii) Uses its net proceeds to maintain, improve, or expand its operations; and
- (2) The term non-profit organization includes non-profit institutions of higher education and hospitals.

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

Oversight agency for audit means the Federal awarding agency that provides the predominant amount of direct funding to a recipient not assigned a cognizant agency for audit. When there is no direct funding, the Federal agency with the predominant indirect funding shall assume the oversight responsibilities. The duties of the oversight agency for audit are described in § __.400 (b).

Effective July 28, 2003, the following is added to this definition:
A Federal agency with oversight for an auditee may reassign oversight to another Federal agency which provides substantial funding and agrees to be the oversight agency for audit. Within 30 days after any reassignment, both the old and the new oversight agency for audit shall notify the auditee, and, if known, the auditor of the reassignment."

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

Program-specific audit means an audit of one Federal program as provided for in § __.200 (c) and § __.235.

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

(1) Which resulted from a violation or possible violation of a provision of a law, regulation, contract, grant, cooperative agreement, or other agreement or document governing the use of Federal funds, including funds used to match Federal funds;

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

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

Recipient means a non-Federal entity that expends Federal awards received directly from a Federal awarding agency to carry out a Federal program.

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

Single audit means an audit which includes both the entity's financial statements and the Federal awards as described in § __.500.

State means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the

Pacific Islands, any instrumentality thereof, any multi-State, regional, or interstate entity which has governmental functions, and any Indian tribe as defined in this section.

Student Financial Aid (SFA) includes those programs of general student assistance, such as those authorized by Title IV of the Higher Education Act of 1965, as amended, (20 U.S.C. 1070 et seq.) which is administered by the U.S. Department of Education, and similar programs provided by other Federal agencies. It does not include programs which provide fellowships or similar Federal awards to students on a competitive basis, or for specified studies or research.

Subrecipient means a non-Federal entity that expends Federal awards received from a pass-through entity to carry out a Federal program, but does not include an individual that is a beneficiary of such a program. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency. Guidance on distinguishing between a subrecipient and a vendor is provided in § .210.

Types of compliance requirements refers to the types of compliance requirements listed in the compliance supplement. Examples include: activities allowed or unallowed; allowable costs/cost principles; cash management; eligibility; matching, level of effort, earmarking; and, reporting.

Vendor means a dealer, distributor, merchant, or other seller providing goods or services that are required for the conduct of a Federal program. These goods or services may be for an organization's own use or for the use of beneficiaries of the Federal program. Additional guidance on distinguishing between a subrecipient and a vendor is provided in § .210.

Subpart B--Audits

§ .200 **Audit requirements.**

(a) Audit required. Non-Federal entities that expend \$300,000 (\$500,000 for fiscal years ending after December 31, 2003) or more in a year in Federal awards shall have a single or program-specific audit conducted for that year in accordance with the provisions of this part. Guidance on determining Federal awards expended is provided in § .205.

(b) Single audit. Non-Federal entities that expend \$300,000 (\$500,000 for fiscal years ending after December 31, 2003) or more in a year in Federal awards shall have a single audit conducted in accordance with § .500 except when they elect to have a program-specific audit conducted in accordance with paragraph (c) of this section.

(c) Program-specific audit election. When an auditee expends Federal awards under only one Federal program (excluding R&D) and the Federal program's laws, regulations, or grant agreements do not require a financial statement audit of the auditee, the auditee may elect to have a program-specific audit conducted in accordance with § .235. A program-specific audit may not be elected for R&D unless all of the Federal awards expended were received from the same Federal agency, or the same Federal agency and the same pass-through entity, and that Federal agency, or pass-through entity in the case of a subrecipient, approves in advance a program-specific audit.

(d) Exemption when Federal awards expended are less than \$300,000 (\$500,000 for fiscal years ending after December 31, 2003). Non-Federal

entities that expend less than \$300,000 (\$500,000 for fiscal years ending after December 31, 2003) a year in Federal awards are exempt from Federal audit requirements for that year, except as noted in § .215 (a), but records must be available for review or audit by appropriate officials of the Federal agency, pass-through entity, and General Accounting Office (GAO).

(e) Federally Funded Research and Development Centers (FFRDC). Management of an auditee that owns or operates a FFRDC may elect to treat the FFRDC as a separate entity for purposes of this part.

§ .205 Basis for determining Federal awards expended.

(a) Determining Federal awards expended. The determination of when an award is expended should be based on when the activity related to the award occurs. Generally, the activity pertains to events that require the non-Federal entity to comply with laws, regulations, and the provisions of contracts or grant agreements, such as: expenditure/expense transactions associated with grants, cost-reimbursement contracts, cooperative agreements, and direct appropriations; the disbursement of funds passed through to subrecipients; the use of loan proceeds under loan and loan guarantee programs; the receipt of property; the receipt of surplus property; the receipt or use of program income; the distribution or consumption of food commodities; the disbursement of amounts entitling the non-Federal entity to an interest subsidy; and, the period when insurance is in force.

(b) Loan and loan guarantees (loans). Since the Federal Government is at risk for loans until the debt is repaid, the following guidelines shall be used to calculate the value of Federal awards expended under loan programs, except as noted in paragraphs (c) and (d) of this section:

(1) Value of new loans made or received during the fiscal year;
plus

(2) Balance of loans from previous years for which the Federal Government imposes continuing compliance requirements; plus

(3) Any interest subsidy, cash, or administrative cost allowance received.

(c) Loan and loan guarantees (loans) at institutions of higher education. When loans are made to students of an institution of higher education but the institution does not make the loans, then only the value of loans made during the year shall be considered Federal awards expended in that year. The balance of loans for previous years is not included as Federal awards expended because the lender accounts for the prior balances.

(d) Prior loan and loan guarantees (loans). Loans, the proceeds of which were received and expended in prior-years, are not considered Federal awards expended under this part when the laws, regulations, and the provisions of contracts or grant agreements pertaining to such loans impose no continuing compliance requirements other than to repay the loans.

(e) Endowment funds. The cumulative balance of Federal awards for endowment funds which are federally restricted are considered awards expended in each year in which the funds are still restricted.

(f) Free rent. Free rent received by itself is not considered a Federal award expended under this part. However, free rent received as part

of an award to carry out a Federal program shall be included in determining Federal awards expended and subject to audit under this part.

(g) Valuing non-cash assistance. Federal non-cash assistance, such as free rent, food stamps, food commodities, donated property, or donated surplus property, shall be valued at fair market value at the time of receipt or the assessed value provided by the Federal agency.

(h) Medicare. Medicare payments to a non-Federal entity for providing patient care services to Medicare eligible individuals are not considered Federal awards expended under this part.

(i) Medicaid. Medicaid payments to a subrecipient for providing patient care services to Medicaid eligible individuals are not considered Federal awards expended under this part unless a State requires the funds to be treated as Federal awards expended because reimbursement is on a cost-reimbursement basis.

(j) Certain loans provided by the National Credit Union Administration. For purposes of this part, loans made from the National Credit Union Share Insurance Fund and the Central Liquidity Facility that are funded by contributions from insured institutions are not considered Federal awards expended.

§ ____.210 Subrecipient and vendor determinations.

(a) General. An auditee may be a recipient, a subrecipient, and a vendor. Federal awards expended as a recipient or a subrecipient would be subject to audit under this part. The payments received for goods or services provided as a vendor would not be considered Federal awards. The guidance in paragraphs (b) and (c) of this section should be considered in determining whether payments constitute a Federal award or a payment for goods and services.

(b) Federal award. Characteristics indicative of a Federal award received by a subrecipient are when the organization:

- (1) Determines who is eligible to receive what Federal financial assistance;
- (2) Has its performance measured against whether the objectives of the Federal program are met;
- (3) Has responsibility for programmatic decision making;
- (4) Has responsibility for adherence to applicable Federal program compliance requirements; and
- (5) Uses the Federal funds to carry out a program of the organization as compared to providing goods or services for a program of the pass-through entity.

(c) Payment for goods and services. Characteristics indicative of a payment for goods and services received by a vendor are when the organization:

- (1) Provides the goods and services within normal business operations;

- (2) Provides similar goods or services to many different purchasers;
- (3) Operates in a competitive environment;
- (4) Provides goods or services that are ancillary to the operation of the Federal program; and
- (5) Is not subject to compliance requirements of the Federal program.

(d) Use of judgment in making determination. There may be unusual circumstances or exceptions to the listed characteristics. In making the determination of whether a subrecipient or vendor relationship exists, the substance of the relationship is more important than the form of the agreement. It is not expected that all of the characteristics will be present and judgment should be used in determining whether an entity is a subrecipient or vendor.

(e) For-profit subrecipient. Since this part does not apply to for-profit subrecipients, the pass-through entity is responsible for establishing requirements, as necessary, to ensure compliance by for-profit subrecipients. The contract with the for-profit subrecipient should describe applicable compliance requirements and the for-profit subrecipient's compliance responsibility. Methods to ensure compliance for Federal awards made to for-profit subrecipients may include pre-award audits, monitoring during the contract, and post-award audits.

(f) Compliance responsibility for vendors. In most cases, the auditee's compliance responsibility for vendors is only to ensure that the procurement, receipt, and payment for goods and services comply with laws, regulations, and the provisions of contracts or grant agreements. Program compliance requirements normally do not pass through to vendors. However, the auditee is responsible for ensuring compliance for vendor transactions which are structured such that the vendor is responsible for program compliance or the vendor's records must be reviewed to determine program compliance. Also, when these vendor transactions relate to a major program, the scope of the audit shall include determining whether these transactions are in compliance with laws, regulations, and the provisions of contracts or grant agreements.

§ __.215 Relation to other audit requirements.

(a) Audit under this part in lieu of other audits. An audit made in accordance with this part shall be in lieu of any financial audit required under individual Federal awards. To the extent this audit meets a Federal agency's needs, it shall rely upon and use such audits. The provisions of this part neither limit the authority of Federal agencies, including their Inspectors General, or GAO to conduct or arrange for additional audits (e.g., financial audits, performance audits, evaluations, inspections, or reviews) nor authorize any auditee to constrain Federal agencies from carrying out additional audits. Any additional audits shall be planned and performed in such a way as to build upon work performed by other auditors.

(b) Federal agency to pay for additional audits. A Federal agency that conducts or contracts for additional audits shall, consistent with other applicable laws and regulations, arrange for funding the full cost of such additional audits.

(c) Request for a program to be audited as a major program. A Federal agency may request an auditee to have a particular Federal program audited as a major program in lieu of the Federal agency conducting or arranging for the additional audits. To allow for planning, such requests should be made at least 180 days prior to the end of the fiscal year to be audited. The auditee, after consultation with its auditor, should promptly respond to such request by informing the Federal agency whether the program would otherwise be audited as a major program using the risk-based audit approach described in § __.520 and, if not, the estimated incremental cost. The Federal agency shall then promptly confirm to the auditee whether it wants the program audited as a major program. If the program is to be audited as a major program based upon this Federal agency request, and the Federal agency agrees to pay the full incremental costs, then the auditee shall have the program audited as a major program. A pass-through entity may use the provisions of this paragraph for a subrecipient.

§ __.220 Frequency of audits.

Except for the provisions for biennial audits provided in paragraphs (a) and (b) of this section, audits required by this part shall be performed annually. Any biennial audit shall cover both years within the biennial period.

(a) A State or local government that is required by constitution or statute, in effect on January 1, 1987, to undergo its audits less frequently than annually, is permitted to undergo its audits pursuant to this part biennially. This requirement must still be in effect for the biennial period under audit.

(b) Any non-profit organization that had biennial audits for all biennial periods ending between July 1, 1992, and January 1, 1995, is permitted to undergo its audits pursuant to this part biennially.

§ __.225 Sanctions.

No audit costs may be charged to Federal awards when audits required by this part have not been made or have been made but not in accordance with this part. In cases of continued inability or unwillingness to have an audit conducted in accordance with this part, Federal agencies and pass-through entities shall take appropriate action using sanctions such as:

(a) Withholding a percentage of Federal awards until the audit is completed satisfactorily;

(b) Withholding or disallowing overhead costs;

(c) Suspending Federal awards until the audit is conducted; or

(d) Terminating the Federal award.

§ __.230 Audit costs.

(a) Allowable costs. Unless prohibited by law, the cost of audits made in accordance with the provisions of this part are allowable charges to Federal awards. The charges may be considered a direct cost or an allocated indirect cost, as determined in accordance with the provisions of applicable OMB cost principles circulars, the Federal Acquisition Regulation (FAR) (48 CFR parts 30 and 31), or other applicable cost principles or regulations.

(b) Unallowable costs. A non-Federal entity shall not charge the following to a Federal award:

(1) The cost of any audit under the Single Audit Act Amendments of 1996 (31 U.S.C. 7501 et seq.) not conducted in accordance with this part.

(2) The cost of auditing a non-Federal entity which has Federal awards expended of less than \$300,000 (*\$500,000 for fiscal years ending after December 31, 2003*) per year and is thereby exempted under **§ __.200 (d)** from having an audit conducted under this part. However, this does not prohibit a pass-through entity from charging Federal awards for the cost of limited scope audits to monitor its subrecipients in accordance with **§ __.400 (d) (3)**, provided the subrecipient does not have a single audit. For purposes of this part, limited scope audits only include agreed-upon procedures engagements conducted in accordance with either the AICPA's generally accepted auditing standards or attestation standards, that are paid for and arranged by a pass-through entity and address only one or more of the following types of compliance requirements: activities allowed or unallowed; allowable costs/cost principles; eligibility; matching, level of effort, earmarking; and, reporting.

§ __.235 Program-specific audits.

(a) Program-specific audit guide available. In many cases, a program-specific audit guide will be available to provide specific guidance to the auditor with respect to internal control, compliance requirements, suggested audit procedures, and audit reporting requirements. The auditor should contact the Office of Inspector General of the Federal agency to determine whether such a guide is available. When a current program-specific audit guide is available, the auditor shall follow GAGAS and the guide when performing a program-specific audit.

(b) Program-specific audit guide not available. (1) When a program-specific audit guide is not available, the auditee and auditor shall have basically the same responsibilities for the Federal program as they would have for an audit of a major program in a single audit.

(2) The auditee shall prepare the financial statement(s) for the Federal program that includes, at a minimum, a schedule of expenditures of Federal awards for the program and notes that describe the significant accounting policies used in preparing the schedule, a summary schedule of prior audit findings consistent with the requirements of **§ __.315 (b)**, and a corrective action plan consistent with the requirements of **§ __.315 (c)**.

(3) The auditor shall:

(i) Perform an audit of the financial statement(s) for the Federal program in accordance with GAGAS;

(ii) Obtain an understanding of internal control and perform tests of internal control over the Federal program consistent with the requirements of **§ __.500 (c)** for a major program;

(iii) Perform procedures to determine whether the auditee has complied with laws, regulations, and the provisions of contracts or grant agreements that could have a direct and material effect on the Federal program consistent with the requirements of **§ __.500 (d)** for a major program; and

(iv) Follow up on prior audit findings, perform procedures to assess the reasonableness of the summary schedule of prior audit findings prepared by the auditee, and report, as a current year audit finding, when the auditor concludes that the summary schedule of prior audit findings materially misrepresents the status of any prior audit finding in accordance with the requirements of § .500 (e).

(4) The auditor's report(s) may be in the form of either combined or separate reports and may be organized differently from the manner presented in this section. The auditor's report(s) shall state that the audit was conducted in accordance with this part and include the following:

(i) An opinion (or disclaimer of opinion) as to whether the financial statement(s) of the Federal program is presented fairly in all material respects in conformity with the stated accounting policies;

(ii) A report on internal control related to the Federal program, which shall describe the scope of testing of internal control and the results of the tests;

(iii) A report on compliance which includes an opinion (or disclaimer of opinion) as to whether the auditee complied with laws, regulations, and the provisions of contracts or grant agreements which could have a direct and material effect on the Federal program; and

(iv) A schedule of findings and questioned costs for the Federal program that includes a summary of the auditor's results relative to the Federal program in a format consistent with § .505 (d) (1) and findings and questioned costs consistent with the requirements of § .505 (d) (3).

(c) Report submission for program-specific audits.

(1) The audit shall be completed and the reporting required by paragraph (c) (2) or (c) (3) of this section submitted within the earlier of 30 days after receipt of the auditor's report(s), or nine months after the end of the audit period, unless a longer period is agreed to in advance by the Federal agency that provided the funding or a different period is specified in a program-specific audit guide. (However, for fiscal years beginning on or before June 30, 1998, the audit shall be completed and the required reporting shall be submitted within the earlier of 30 days after receipt of the auditor's report(s), or 13 months after the end of the audit period, unless a different period is specified in a program-specific audit guide.) Unless restricted by law or regulation, the auditee shall make report copies available for public inspection.

(2) When a program-specific audit guide is available, the auditee shall submit to the Federal clearinghouse designated by OMB the data collection form prepared in accordance with § .320 (b), as applicable to a program-specific audit, and the reporting required by the program-specific audit guide to be retained as an archival copy. Also, the auditee shall submit to the Federal awarding agency or pass-through entity the reporting required by the program-specific audit guide.

(3) When a program-specific audit guide is not available, the reporting package for a program-specific audit shall consist of the financial statement(s) of the Federal program, a summary schedule of prior audit findings, and a corrective action plan as described in paragraph (b) (2) of this section, and the auditor's report(s) described in paragraph (b) (4) of this section. The data collection form prepared in accordance with

§ __.320 (b), as applicable to a program-specific audit, and one copy of this reporting package shall be submitted to the Federal clearinghouse designated by OMB to be retained as an archival copy. Also, when the schedule of findings and questioned costs disclosed audit findings or the summary schedule of prior audit findings reported the status of any audit findings, the auditee shall submit one copy of the reporting package to the Federal clearinghouse on behalf of the Federal awarding agency, or directly to the pass-through entity in the case of a subrecipient. Instead of submitting the reporting package to the pass-through entity, when a subrecipient is not required to submit a reporting package to the pass-through entity, the subrecipient shall provide written notification to the pass-through entity, consistent with the requirements of § __.320 (e) (2). A subrecipient may submit a copy of the reporting package to the pass-through entity to comply with this notification requirement.

(d) Other sections of this part may apply. Program-specific audits are subject to § __.100 through § __.215 (b), § __.220 through § __.230, § __.300 through § __.305, § __.315, § __.320 (f) through § __.320 (j), § __.400 through § __.405, § __.510 through § __.515, and other referenced provisions of this part unless contrary to the provisions of this section, a program-specific audit guide, or program laws and regulations.

Subpart C--Auditees

§ __.300 Auditee responsibilities.

The auditee shall:

(a) Identify, in its accounts, all Federal awards received and expended and the Federal programs under which they were received. Federal program and award identification shall include, as applicable, the CFDA title and number, award number and year, name of the Federal agency, and name of the pass-through entity.

(b) Maintain internal control over Federal programs that provides reasonable assurance that the auditee is managing Federal awards in compliance with laws, regulations, and the provisions of contracts or grant agreements that could have a material effect on each of its Federal programs.

(c) Comply with laws, regulations, and the provisions of contracts or grant agreements related to each of its Federal programs.

(d) Prepare appropriate financial statements, including the schedule of expenditures of Federal awards in accordance with § __.310.

(e) Ensure that the audits required by this part are properly performed and submitted when due. When extensions to the report submission due date required by § __.320 (a) are granted by the cognizant or oversight agency for audit, promptly notify the Federal clearinghouse designated by OMB and each pass-through entity providing Federal awards of the extension.

(f) Follow up and take corrective action on audit findings, including preparation of a summary schedule of prior audit findings and a corrective action plan in accordance with § __.315 (b) and § __.315 (c), respectively.

§ __.305 Auditor selection.

(a) Auditor procurement. In procuring audit services, auditees shall follow the procurement standards prescribed by the Grants Management Common Rule (hereinafter referred to as the "A-102 Common Rule") published March 11, 1988 and amended April 19, 1995 [insert appropriate CFR citation], Circular A-110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations," or the FAR (48 CFR part 42), as applicable (OMB Circulars are available from the Office of Administration, Publications Office, room 2200, New Executive Office Building, Washington, DC 20503). Whenever possible, auditees shall make positive efforts to utilize small businesses, minority-owned firms, and women's business enterprises, in procuring audit services as stated in the A-102 Common Rule, OMB Circular A-110, or the FAR (48 CFR part 42), as applicable. In requesting proposals for audit services, the objectives and scope of the audit should be made clear. Factors to be considered in evaluating each proposal for audit services include the responsiveness to the request for proposal, relevant experience, availability of staff with professional qualifications and technical abilities, the results of external quality control reviews, and price.

(b) Restriction on auditor preparing indirect cost proposals. An auditor who prepares the indirect cost proposal or cost allocation plan may not also be selected to perform the audit required by this part when the indirect costs recovered by the auditee during the prior year exceeded \$1 million. This restriction applies to the base year used in the preparation of the indirect cost proposal or cost allocation plan and any subsequent years in which the resulting indirect cost agreement or cost allocation plan is used to recover costs. To minimize any disruption in existing contracts for audit services, this paragraph applies to audits of fiscal years beginning after June 30, 1998.

(c) Use of Federal auditors. Federal auditors may perform all or part of the work required under this part if they comply fully with the requirements of this part.

§ __.310 Financial statements.

(a) Financial statements. The auditee shall prepare financial statements that reflect its financial position, results of operations or changes in net assets, and, where appropriate, cash flows for the fiscal year audited. The financial statements shall be for the same organizational unit and fiscal year that is chosen to meet the requirements of this part. However, organization-wide financial statements may also include departments, agencies, and other organizational units that have separate audits in accordance with § __.500(a) and prepare separate financial statements.

(b) Schedule of expenditures of Federal awards. The auditee shall also prepare a schedule of expenditures of Federal awards for the period covered by the auditee's financial statements. While not required, the auditee may choose to provide information requested by Federal awarding agencies and pass-through entities to make the schedule easier to use. For example, when a Federal program has multiple award years, the auditee may list the amount of Federal awards expended for each award year separately. At a minimum, the schedule shall:

(1) List individual Federal programs by Federal agency. For Federal programs included in a cluster of programs, list individual Federal programs within a cluster of programs. For R&D, total Federal awards expended shall be shown either by individual award or by Federal agency and major subdivision within the Federal agency. For example, the National Institutes of Health is a major subdivision in the Department of Health and Human Services.

(2) For Federal awards received as a subrecipient, the name of the pass-through entity and identifying number assigned by the pass-through entity shall be included.

(3) Provide total Federal awards expended for each individual Federal program and the CFDA number or other identifying number when the CFDA information is not available.

(4) Include notes that describe the significant accounting policies used in preparing the schedule.

(5) To the extent practical, pass-through entities should identify in the schedule the total amount provided to subrecipients from each Federal program.

(6) Include, in either the schedule or a note to the schedule, the value of the Federal awards expended in the form of non-cash assistance, the amount of insurance in effect during the year, and loans or loan guarantees outstanding at year end. While not required, it is preferable to present this information in the schedule.

§ __.315 Audit findings follow-up.

(a) General. The auditee is responsible for follow-up and corrective action on all audit findings. As part of this responsibility, the auditee shall prepare a summary schedule of prior audit findings. The auditee shall also prepare a corrective action plan for current year audit findings. The summary schedule of prior audit findings and the corrective action plan shall include the reference numbers the auditor assigns to audit findings under **§ __.510(c)**. Since the summary schedule may include audit findings from multiple years, it shall include the fiscal year in which the finding initially occurred.

(b) Summary schedule of prior audit findings. The summary schedule of prior audit findings shall report the status of all audit findings included in the prior audit's schedule of findings and questioned costs relative to Federal awards. The summary schedule shall also include audit findings reported in the prior audit's summary schedule of prior audit findings except audit findings listed as corrected in accordance with paragraph **(b)(1)** of this section, or no longer valid or not warranting further action in accordance with paragraph **(b)(4)** of this section.

(1) When audit findings were fully corrected, the summary schedule need only list the audit findings and state that corrective action was taken.

(2) When audit findings were not corrected or were only partially corrected, the summary schedule shall describe the planned corrective action as well as any partial corrective action taken.

(3) When corrective action taken is significantly different from corrective action previously reported in a corrective action plan or in the Federal agency's or pass-through entity's management decision, the summary schedule shall provide an explanation.

(4) When the auditee believes the audit findings are no longer valid or do not warrant further action, the reasons for this position shall be described in the summary schedule. A valid reason for considering an audit finding as not warranting further action is that all of the following have occurred:

(i) Two years have passed since the audit report in which

the finding occurred was submitted to the Federal clearinghouse;

(ii) The Federal agency or pass-through entity is not currently following up with the auditee on the audit finding; and

(iii) A management decision was not issued.

(c) Corrective action plan. At the completion of the audit, the auditee shall prepare a corrective action plan to address each audit finding included in the current year auditor's reports. The corrective action plan shall provide the name(s) of the contact person(s) responsible for corrective action, the corrective action planned, and the anticipated completion date. If the auditee does not agree with the audit findings or believes corrective action is not required, then the corrective action plan shall include an explanation and specific reasons.

§ ____.320 Report submission.

(a) General. The audit shall be completed and the data collection form described in paragraph (b) of this section and reporting package described in paragraph (c) of this section shall be submitted within the earlier of 30 days after receipt of the auditor's report(s), or nine months after the end of the audit period, unless a longer period is agreed to in advance by the cognizant or oversight agency for audit. (However, for fiscal years beginning on or before June 30, 1998, the audit shall be completed and the data collection form and reporting package shall be submitted within the earlier of 30 days after receipt of the auditor's report(s), or 13 months after the end of the audit period.) Unless restricted by law or regulation, the auditee shall make copies available for public inspection.

(b) Data Collection. (1) The auditee shall submit a data collection form which states whether the audit was completed in accordance with this part and provides information about the auditee, its Federal programs, and the results of the audit. The form shall be approved by OMB, available from the Federal clearinghouse designated by OMB, and include data elements similar to those presented in this paragraph. A senior level representative of the auditee (e.g., State controller, director of finance, chief executive officer, or chief financial officer) shall sign a statement to be included as part of the form certifying that: the auditee complied with the requirements of this part, the form was prepared in accordance with this part (and the instructions accompanying the form), and the information included in the form, in its entirety, are accurate and complete.

(2) The data collection form shall include the following data elements:

- (i) The type of report the auditor issued on the financial statements of the auditee (i.e., unqualified opinion, qualified opinion, adverse opinion, or disclaimer of opinion).
- (ii) Where applicable, a statement that reportable conditions in internal control were disclosed by the audit of the financial statements and whether any such conditions were material weaknesses.
- (iii) A statement as to whether the audit disclosed any noncompliance which is material to the financial statements of the auditee.
- (iv) Where applicable, a statement that reportable conditions in internal control over major programs were disclosed by the audit and whether any such conditions were material weaknesses.
- (v) The type of report the auditor issued on compliance for major

programs (i.e., unqualified opinion, qualified opinion, adverse opinion, or disclaimer of opinion).

- (vi) A list of the Federal awarding agencies which will receive a copy of the reporting package pursuant to § __.320(d)(2) of OMB Circular A-133.
- (vii) A yes or no statement as to whether the auditee qualified as a low-risk auditee under § __.530 of OMB Circular A-133.
- (viii) The dollar threshold used to distinguish between Type A and Type B programs as defined in § __.520(b) of OMB Circular A-133.
- (ix) The Catalog of Federal Domestic Assistance (CFDA) number for each Federal program, as applicable.
- (x) The name of each Federal program and identification of each major program. Individual programs within a cluster of programs should be listed in the same level of detail as they are listed in the schedule of expenditures of Federal awards.
- (xi) The amount of expenditures in the schedule of expenditures of Federal awards associated with each Federal program.
- (xii) For each Federal program, a yes or no statement as to whether there are audit findings in each of the following types of compliance requirements and the total amount of any questioned costs:
 - (A) Activities allowed or unallowed.
 - (B) Allowable costs/cost principles.
 - (C) Cash management.
 - (D) Davis-Bacon Act.
 - (E) Eligibility.
 - (F) Equipment and real property management.
 - (G) Matching, level of effort, earmarking.
 - (H) Period of availability of Federal funds.
 - (I) Procurement and suspension and debarment.
 - (J) Program income.
 - (K) Real property acquisition and relocation assistance.
 - (L) Reporting.
 - (M) Subrecipient monitoring.
 - (N) Special tests and provisions.
- (xiii) Auditee Name, Employer Identification Number(s), Name and Title of Certifying Official, Telephone Number, Signature, and Date.
- (xiv) Auditor Name, Name and Title of Contact Person, Auditor Address, Auditor Telephone Number, Signature, and Date.
- (xv) Whether the auditee has either a cognizant or oversight agency for audit.
- (xvi) The name of the cognizant or oversight agency for audit determined in accordance with § __.400(a) and § __.400(b), respectively.

(3) Using the information included in the reporting package described in paragraph (c) of this section, the auditor shall complete the applicable sections of the form. The auditor shall sign a statement to be included as part of the data collection form that indicates, at a minimum, the source of the information included in the form, the auditor's responsibility for the information, that the form is not a substitute for the reporting package described in paragraph (c) of this section, and that the content of

the form is limited to the data elements prescribed by OMB.

(c) Reporting package. The reporting package shall include the:

- (1) Financial statements and schedule of expenditures of Federal awards discussed in § ____.310(a) and § ____.310(b), respectively;
- (2) Summary schedule of prior audit findings discussed in § ____.315(b);
- (3) Auditor's report(s) discussed in § ____.505; and
- (4) Corrective action plan discussed in § ____.315(c).

(d) Submission to clearinghouse. All auditees shall submit to the Federal clearinghouse designated by OMB the data collection form described in paragraph (b) of this section and one copy of the reporting package described in paragraph (c) of this section for:

(1) The Federal clearinghouse to retain as an archival copy;
and

(2) Each Federal awarding agency when the schedule of findings and questioned costs disclosed audit findings relating to Federal awards that the Federal awarding agency provided directly or the summary schedule of prior audit findings reported the status of any audit findings relating to Federal awards that the Federal awarding agency provided directly.

(e) Additional submission by subrecipients. (1) In addition to the requirements discussed in paragraph (d) of this section, auditees that are also subrecipients shall submit to each pass-through entity one copy of the reporting package described in paragraph (c) of this section for each pass-through entity when the schedule of findings and questioned costs disclosed audit findings relating to Federal awards that the pass-through entity provided or the summary schedule of prior audit findings reported the status of any audit findings relating to Federal awards that the pass-through entity provided.

(2) Instead of submitting the reporting package to a pass-through entity, when a subrecipient is not required to submit a reporting package to a pass-through entity pursuant to paragraph (e)(1) of this section, the subrecipient shall provide written notification to the pass-through entity that: an audit of the subrecipient was conducted in accordance with this part (including the period covered by the audit and the name, amount, and CFDA number of the Federal award(s) provided by the pass-through entity); the schedule of findings and questioned costs disclosed no audit findings relating to the Federal award(s) that the pass-through entity provided; and, the summary schedule of prior audit findings did not report on the status of any audit findings relating to the Federal award(s) that the pass-through entity provided. A subrecipient may submit a copy of the reporting package described in paragraph (c) of this section to a pass-through entity to comply with this notification requirement.

(f) Requests for report copies. In response to requests by a Federal agency or pass-through entity, auditees shall submit the appropriate copies of the reporting package described in paragraph (c) of this section and, if requested, a copy of any management letters issued by the auditor.

(g) Report retention requirements. Auditees shall keep one copy of the data collection form described in paragraph (b) of this section and one copy of the reporting package described in paragraph (c) of this section on file for three years from the date of submission to the Federal clearinghouse

designated by OMB. Pass-through entities shall keep subrecipients' submissions on file for three years from date of receipt.

(h) Clearinghouse responsibilities. The Federal clearinghouse designated by OMB shall distribute the reporting packages received in accordance with paragraph (d) (2) of this section and § ____ .235 (c) (3) to applicable Federal awarding agencies, maintain a data base of completed audits, provide appropriate information to Federal agencies, and follow up with known auditees which have not submitted the required data collection forms and reporting packages.

(i) Clearinghouse address. The address of the Federal clearinghouse currently designated by OMB is Federal Audit Clearinghouse, Bureau of the Census, 1201 E. 10th Street, Jeffersonville, IN 47132.

(j) Electronic filing. Nothing in this part shall preclude electronic submissions to the Federal clearinghouse in such manner as may be approved by OMB. With OMB approval, the Federal clearinghouse may pilot test methods of electronic submissions.

Subpart D--Federal Agencies and Pass-Through Entities
§ ____ .400 Responsibilities.

(a) Cognizant agency for audit responsibilities. Recipients expending more than \$25 million (*\$50 million for fiscal years ending after December 31, 2003*) a year in Federal awards shall have a cognizant agency for audit. The designated cognizant agency for audit shall be the Federal awarding agency that provides the predominant amount of direct funding to a recipient unless OMB makes a specific cognizant agency for audit assignment.

Following is effective for fiscal years ending on or before December 31, 2003: To provide for continuity of cognizance, the determination of the predominant amount of direct funding shall be based upon direct Federal awards expended in the recipient's fiscal years ending in 1995, 2000, 2005, and every fifth year thereafter. For example, audit cognizance for periods ending in 1997 through 2000 will be determined based on Federal awards expended in 1995. (However, for States and local governments that expend more than \$25 million a year in Federal awards and have previously assigned cognizant agencies for audit, the requirements of this paragraph are not effective until fiscal years beginning after June 30, 2000.)

Following is effective for fiscal years ending after December 31, 2003: The determination of the predominant amount of direct funding shall be based upon direct Federal awards expended in the recipient's fiscal years ending in 2004, 2009, 2014, and every fifth year thereafter. For example, audit cognizance for periods ending in 2006 through 2010 will be determined based on Federal awards expended in 2004. (However, for 2001 through 2005, the cognizant agency for audit is determined based on the predominant amount of direct Federal awards expended in the recipient's fiscal year ending in 2000).

Notwithstanding the manner in which audit cognizance is determined, a Federal awarding agency with cognizance for an auditee may reassign cognizance to another Federal awarding agency which provides substantial direct funding and agrees to be the cognizant agency for audit. Within 30 days after any reassignment, both the old and the new cognizant agency for audit shall notify the auditee, and, if known, the auditor of the reassignment. The cognizant agency for audit shall:

- (1) Provide technical audit advice and liaison to auditees and auditors.
- (2) Consider auditee requests for extensions to the report

submission due date required by § __.320(a). The cognizant agency for audit may grant extensions for good cause.

(3) Obtain or conduct quality control reviews of selected audits made by non-Federal auditors, and provide the results, when appropriate, to other interested organizations.

(4) Promptly inform other affected Federal agencies and appropriate Federal law enforcement officials of any direct reporting by the auditee or its auditor of irregularities or illegal acts, as required by GAGAS or laws and regulations.

(5) Advise the auditor and, where appropriate, the auditee of any deficiencies found in the audits when the deficiencies require corrective action by the auditor. When advised of deficiencies, the auditee shall work with the auditor to take corrective action. If corrective action is not taken, the cognizant agency for audit shall notify the auditor, the auditee, and applicable Federal awarding agencies and pass-through entities of the facts and make recommendations for follow-up action. Major inadequacies or repetitive substandard performance by auditors shall be referred to appropriate State licensing agencies and professional bodies for disciplinary action.

(6) Coordinate, to the extent practical, audits or reviews made by or for Federal agencies that are in addition to the audits made pursuant to this part, so that the additional audits or reviews build upon audits performed in accordance with this part.

(7) Coordinate a management decision for audit findings that affect the Federal programs of more than one agency.

(8) Coordinate the audit work and reporting responsibilities among auditors to achieve the most cost-effective audit.

(9) For biennial audits permitted under § __.220, consider auditee requests to qualify as a low-risk auditee under § __.530(a).

(b) Oversight agency for audit responsibilities. An auditee which does not have a designated cognizant agency for audit will be under the general oversight of the Federal agency determined in accordance with § __.105. The oversight agency for audit:

(1) Shall provide technical advice to auditees and auditors as requested.

(2) May assume all or some of the responsibilities normally performed by a cognizant agency for audit.

(c) Federal awarding agency responsibilities. The Federal awarding agency shall perform the following for the Federal awards it makes:

(1) Identify Federal awards made by informing each recipient of the CFDA title and number, award name and number, award year, and if the award is for R&D. When some of this information is not available, the Federal agency shall provide information necessary to clearly describe the Federal award.

(2) Advise recipients of requirements imposed on them by Federal laws, regulations, and the provisions of contracts or grant agreements.

(3) Ensure that audits are completed and reports are received

in a timely manner and in accordance with the requirements of this part.

(4) Provide technical advice and counsel to auditees and auditors as requested.

(5) Issue a management decision on audit findings within six months after receipt of the audit report and ensure that the recipient takes appropriate and timely corrective action.

(6) Assign a person responsible for providing annual updates of the compliance supplement to OMB.

(d) Pass-through entity responsibilities. A pass-through entity shall perform the following for the Federal awards it makes:

(1) Identify Federal awards made by informing each subrecipient of CFDA title and number, award name and number, award year, if the award is R&D, and name of Federal agency. When some of this information is not available, the pass-through entity shall provide the best information available to describe the Federal award.

(2) Advise subrecipients of requirements imposed on them by Federal laws, regulations, and the provisions of contracts or grant agreements as well as any supplemental requirements imposed by the pass-through entity.

(3) Monitor the activities of subrecipients as necessary to ensure that Federal awards are used for authorized purposes in compliance with laws, regulations, and the provisions of contracts or grant agreements and that performance goals are achieved.

(4) Ensure that subrecipients expending \$300,000 (*\$500,000 for fiscal years ending after December 31, 2003*) or more in Federal awards during the subrecipient's fiscal year have met the audit requirements of this part for that fiscal year.

(5) Issue a management decision on audit findings within six months after receipt of the subrecipient's audit report and ensure that the subrecipient takes appropriate and timely corrective action.

(6) Consider whether subrecipient audits necessitate adjustment of the pass-through entity's own records.

(7) Require each subrecipient to permit the pass-through entity and auditors to have access to the records and financial statements as necessary for the pass-through entity to comply with this part.

§ __.405 Management decision.

(a) General. The management decision shall clearly state whether or not the audit finding is sustained, the reasons for the decision, and the expected auditee action to repay disallowed costs, make financial adjustments, or take other action. If the auditee has not completed corrective action, a timetable for follow-up should be given. Prior to issuing the management decision, the Federal agency or pass-through entity may request additional information or documentation from the auditee, including a request for auditor assurance related to the documentation, as a way of mitigating disallowed costs. The management decision should describe any appeal process available to the auditee.

(b) Federal agency. As provided in § __.400 (a) (7), the cognizant agency for audit shall be responsible for coordinating a management decision for audit findings that affect the programs of more than one Federal agency.

As provided in § .400(c)(5), a Federal awarding agency is responsible for issuing a management decision for findings that relate to Federal awards it makes to recipients. Alternate arrangements may be made on a case-by-case basis by agreement among the Federal agencies concerned.

(c) Pass-through entity. As provided in § .400(d)(5), the pass-through entity shall be responsible for making the management decision for audit findings that relate to Federal awards it makes to subrecipients.

(d) Time requirements. The entity responsible for making the management decision shall do so within six months of receipt of the audit report. Corrective action should be initiated within six months after receipt of the audit report and proceed as rapidly as possible.

(e) Reference numbers. Management decisions shall include the reference numbers the auditor assigned to each audit finding in accordance with § .510(c).

Subpart E--Auditors

§ .500 Scope of audit.

(a) General. The audit shall be conducted in accordance with GAGAS. The audit shall cover the entire operations of the auditee; or, at the option of the auditee, such audit shall include a series of audits that cover departments, agencies, and other organizational units which expended or otherwise administered Federal awards during such fiscal year, provided that each such audit shall encompass the financial statements and schedule of expenditures of Federal awards for each such department, agency, and other organizational unit, which shall be considered to be a non-Federal entity. The financial statements and schedule of expenditures of Federal awards shall be for the same fiscal year.

(b) Financial statements. The auditor shall determine whether the financial statements of the auditee are presented fairly in all material respects in conformity with generally accepted accounting principles. The auditor shall also determine whether the schedule of expenditures of Federal awards is presented fairly in all material respects in relation to the auditee's financial statements taken as a whole.

(c) Internal control. (1) In addition to the requirements of GAGAS, the auditor shall perform procedures to obtain an understanding of internal control over Federal programs sufficient to plan the audit to support a low assessed level of control risk for major programs.

(2) Except as provided in paragraph (c)(3) of this section, the auditor shall:

(i) Plan the testing of internal control over major programs to support a low assessed level of control risk for the assertions relevant to the compliance requirements for each major program; and

(ii) Perform testing of internal control as planned in paragraph (c)(2)(i) of this section.

(3) When internal control over some or all of the compliance requirements for a major program are likely to be ineffective in preventing or detecting noncompliance, the planning and performing of testing described in paragraph (c)(2) of this section are not required for those compliance requirements. However, the auditor shall report a reportable condition (including whether any such condition is a material weakness) in accordance with § .510, assess the related control risk at the maximum, and consider whether additional compliance tests are required because of ineffective

internal control.

(d) Compliance. (1) In addition to the requirements of GAGAS, the auditor shall determine whether the auditee has complied with laws, regulations, and the provisions of contracts or grant agreements that may have a direct and material effect on each of its major programs.

(2) The principal compliance requirements applicable to most Federal programs and the compliance requirements of the largest Federal programs are included in the compliance supplement.

(3) For the compliance requirements related to Federal programs contained in the compliance supplement, an audit of these compliance requirements will meet the requirements of this part. Where there have been changes to the compliance requirements and the changes are not reflected in the compliance supplement, the auditor shall determine the current compliance requirements and modify the audit procedures accordingly. For those Federal programs not covered in the compliance supplement, the auditor should use the types of compliance requirements contained in the compliance supplement as guidance for identifying the types of compliance requirements to test, and determine the requirements governing the Federal program by reviewing the provisions of contracts and grant agreements and the laws and regulations referred to in such contracts and grant agreements.

(4) The compliance testing shall include tests of transactions and such other auditing procedures necessary to provide the auditor sufficient evidence to support an opinion on compliance.

(e) Audit follow-up. The auditor shall follow-up on prior audit findings, perform procedures to assess the reasonableness of the summary schedule of prior audit findings prepared by the auditee in accordance with § __.315(b), and report, as a current year audit finding, when the auditor concludes that the summary schedule of prior audit findings materially misrepresents the status of any prior audit finding. The auditor shall perform audit follow-up procedures regardless of whether a prior audit finding relates to a major program in the current year.

(f) Data Collection Form. As required in § __.320(b)(3), the auditor shall complete and sign specified sections of the data collection form.

§ __.505 Audit reporting.

The auditor's report(s) may be in the form of either combined or separate reports and may be organized differently from the manner presented in this section. The auditor's report(s) shall state that the audit was conducted in accordance with this part and include the following:

(a) An opinion (or disclaimer of opinion) as to whether the financial statements are presented fairly in all material respects in conformity with generally accepted accounting principles and an opinion (or disclaimer of opinion) as to whether the schedule of expenditures of Federal awards is presented fairly in all material respects in relation to the financial statements taken as a whole.

(b) A report on internal control related to the financial statements and major programs. This report shall describe the scope of testing of internal control and the results of the tests, and, where applicable, refer to the separate schedule of findings and questioned costs described in paragraph (d) of this section.

(c) A report on compliance with laws, regulations, and the provisions of contracts or grant agreements, noncompliance with which could have a

material effect on the financial statements. This report shall also include an opinion (or disclaimer of opinion) as to whether the auditee complied with laws, regulations, and the provisions of contracts or grant agreements which could have a direct and material effect on each major program, and, where applicable, refer to the separate schedule of findings and questioned costs described in paragraph (d) of this section.

(d) A schedule of findings and questioned costs which shall include the following three components:

(1) A summary of the auditor's results which shall include:

(i) The type of report the auditor issued on the financial statements of the auditee (i.e., unqualified opinion, qualified opinion, adverse opinion, or disclaimer of opinion);

(ii) Where applicable, a statement that reportable conditions in internal control were disclosed by the audit of the financial statements and whether any such conditions were material weaknesses;

(iii) A statement as to whether the audit disclosed any noncompliance which is material to the financial statements of the auditee;

(iv) Where applicable, a statement that reportable conditions in internal control over major programs were disclosed by the audit and whether any such conditions were material weaknesses;

(v) The type of report the auditor issued on compliance for major programs (i.e., unqualified opinion, qualified opinion, adverse opinion, or disclaimer of opinion);

(vi) A statement as to whether the audit disclosed any audit findings which the auditor is required to report under § __.510(a);

(vii) An identification of major programs;

(viii) The dollar threshold used to distinguish between Type A and Type B programs, as described in § __.520(b); and

(ix) A statement as to whether the auditee qualified as a low-risk auditee under § __.530.

(2) Findings relating to the financial statements which are required to be reported in accordance with GAGAS.

(3) Findings and questioned costs for Federal awards which shall include audit findings as defined in § __.510(a).

(i) Audit findings (e.g., internal control findings, compliance findings, questioned costs, or fraud) which relate to the same issue should be presented as a single audit finding. Where practical, audit findings should be organized by Federal agency or pass-through entity.

(ii) Audit findings which relate to both the financial statements and Federal awards, as reported under paragraphs (d)(2) and (d)(3) of this section, respectively, should be reported in both sections of the schedule. However, the reporting in one section of the schedule may be in summary form with a reference to a detailed reporting in the other section of the schedule.

§ __.510 **Audit findings.**

(a) Audit findings reported. The auditor shall report the following as audit findings in a schedule of findings and questioned costs:

(1) Reportable conditions in internal control over major programs. The auditor's determination of whether a deficiency in internal control is a reportable condition for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program or an audit objective identified in the compliance supplement. The auditor shall identify reportable conditions which are individually or cumulatively material weaknesses.

(2) Material noncompliance with the provisions of laws, regulations, contracts, or grant agreements related to a major program. The auditor's determination of whether a noncompliance with the provisions of laws, regulations, contracts, or grant agreements is material for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program or an audit objective identified in the compliance supplement.

(3) Known questioned costs which are greater than \$10,000 for a type of compliance requirement for a major program. Known questioned costs are those specifically identified by the auditor. In evaluating the effect of questioned costs on the opinion on compliance, the auditor considers the best estimate of total costs questioned (likely questioned costs), not just the questioned costs specifically identified (known questioned costs). The auditor shall also report known questioned costs when likely questioned costs are greater than \$10,000 for a type of compliance requirement for a major program. In reporting questioned costs, the auditor shall include information to provide proper perspective for judging the prevalence and consequences of the questioned costs.

(4) Known questioned costs which are greater than \$10,000 for a Federal program which is not audited as a major program. Except for audit follow-up, the auditor is not required under this part to perform audit procedures for such a Federal program; therefore, the auditor will normally not find questioned costs for a program which is not audited as a major program. However, if the auditor does become aware of questioned costs for a Federal program which is not audited as a major program (e.g., as part of audit follow-up or other audit procedures) and the known questioned costs are greater than \$10,000, then the auditor shall report this as an audit finding.

(5) The circumstances concerning why the auditor's report on compliance for major programs is other than an unqualified opinion, unless such circumstances are otherwise reported as audit findings in the schedule of findings and questioned costs for Federal awards.

(6) Known fraud affecting a Federal award, unless such fraud is otherwise reported as an audit finding in the schedule of findings and questioned costs for Federal awards. This paragraph does not require the auditor to make an additional reporting when the auditor confirms that the fraud was reported outside of the auditor's reports under the direct reporting requirements of GAGAS.

(7) Instances where the results of audit follow-up procedures disclosed that the summary schedule of prior audit findings prepared by the auditee in accordance with § ___.315(b) materially misrepresents the status of any prior audit finding.

(b) Audit finding detail. Audit findings shall be presented in sufficient detail for the auditee to prepare a corrective action plan and take corrective action and for Federal agencies and pass-through entities to arrive at a management decision. The following specific information shall be

included, as applicable, in audit findings:

(1) Federal program and specific Federal award identification including the CFDA title and number, Federal award number and year, name of Federal agency, and name of the applicable pass-through entity. When information, such as the CFDA title and number or Federal award number, is not available, the auditor shall provide the best information available to describe the Federal award.

(2) The criteria or specific requirement upon which the audit finding is based, including statutory, regulatory, or other citation.

(3) The condition found, including facts that support the deficiency identified in the audit finding.

(4) Identification of questioned costs and how they were computed.

(5) Information to provide proper perspective for judging the prevalence and consequences of the audit findings, such as whether the audit findings represent an isolated instance or a systemic problem. Where appropriate, instances identified shall be related to the universe and the number of cases examined and be quantified in terms of dollar value.

(6) The possible asserted effect to provide sufficient information to the auditee and Federal agency, or pass-through entity in the case of a subrecipient, to permit them to determine the cause and effect to facilitate prompt and proper corrective action.

(7) Recommendations to prevent future occurrences of the deficiency identified in the audit finding.

(8) Views of responsible officials of the auditee when there is disagreement with the audit findings, to the extent practical.

(c) Reference numbers. Each audit finding in the schedule of findings and questioned costs shall include a reference number to allow for easy referencing of the audit findings during follow-up.

§ __.515 Audit working papers.

(a) Retention of working papers. The auditor shall retain working papers and reports for a minimum of three years after the date of issuance of the auditor's report(s) to the auditee, unless the auditor is notified in writing by the cognizant agency for audit, oversight agency for audit, or pass-through entity to extend the retention period. When the auditor is aware that the Federal awarding agency, pass-through entity, or auditee is contesting an audit finding, the auditor shall contact the parties contesting the audit finding for guidance prior to destruction of the working papers and reports.

(b) Access to working papers. Audit working papers shall be made available upon request to the cognizant or oversight agency for audit or its designee, a Federal agency providing direct or indirect funding, or GAO at the completion of the audit, as part of a quality review, to resolve audit findings, or to carry out oversight responsibilities consistent with the purposes of this part. Access to working papers includes the right of Federal agencies to obtain copies of working papers, as is reasonable and necessary.

§ __.520 Major program determination.

(a) General. The auditor shall use a risk-based approach to determine which Federal programs are major programs. This risk-based approach shall include consideration of: Current and prior audit experience, oversight by Federal agencies and pass-through entities, and the inherent risk of the Federal program. The process in paragraphs (b) through (i) of this section shall be followed.

(b) Step 1. (1) The auditor shall identify the larger Federal programs, which shall be labeled Type A programs. Type A programs are defined as Federal programs with Federal awards expended during the audit period exceeding the larger of:

(i) \$300,000 or three percent (.03) of total Federal awards expended in the case of an auditee for which total Federal awards expended equal or exceed \$300,000 but are less than or equal to \$100 million.

(ii) \$3 million or three-tenths of one percent (.003) of total Federal awards expended in the case of an auditee for which total Federal awards expended exceed \$100 million but are less than or equal to \$10 billion.

(iii) \$30 million or 15 hundredths of one percent (.0015) of total Federal awards expended in the case of an auditee for which total Federal awards expended exceed \$10 billion.

(2) Federal programs not labeled Type A under paragraph (b) (1) of this section shall be labeled Type B programs.

(3) The inclusion of large loan and loan guarantees (loans) should not result in the exclusion of other programs as Type A programs. When a Federal program providing loans significantly affects the number or size of Type A programs, the auditor shall consider this Federal program as a Type A program and exclude its values in determining other Type A programs.

(4) For biennial audits permitted under § __.220, the determination of Type A and Type B programs shall be based upon the Federal awards expended during the two-year period.

(c) Step 2. (1) The auditor shall identify Type A programs which are low-risk. For a Type A program to be considered low-risk, it shall have been audited as a major program in at least one of the two most recent audit periods (in the most recent audit period in the case of a biennial audit), and, in the most recent audit period, it shall have had no audit findings under § __.510(a). However, the auditor may use judgment and consider that audit findings from questioned costs under § __.510(a)(3) and § __.510(a)(4), fraud under § __.510(a)(6), and audit follow-up for the summary schedule of prior audit findings under § __.510(a)(7) do not preclude the Type A program from being low-risk. The auditor shall consider: the criteria in § __.525(c), § __.525(d)(1), § __.525(d)(2), and § __.525(d)(3); the results of audit follow-up; whether any changes in personnel or systems affecting a Type A program have significantly increased risk; and apply professional judgment in determining whether a Type A program is low-risk.

(2) Notwithstanding paragraph (c) (1) of this section, OMB may approve a Federal awarding agency's request that a Type A program at certain recipients may not be considered low-risk. For example, it may be necessary for a large Type A program to be audited as major each year at particular recipients to allow the Federal agency to comply with the Government Management Reform Act of 1994 (31 U.S.C. 3515). The Federal agency shall notify the recipient and, if known, the auditor at least 180 days prior to the

end of the fiscal year to be audited of OMB's approval.

(d) Step 3. (1) The auditor shall identify Type B programs which are high-risk using professional judgment and the criteria in § .525. However, should the auditor select Option 2 under Step 4 (paragraph (e)(2)(i)(B) of this section), the auditor is not required to identify more high-risk Type B programs than the number of low-risk Type A programs. Except for known reportable conditions in internal control or compliance problems as discussed in § .525(b)(1), § .525(b)(2), and § .525(c)(1), a single criteria in § .525 would seldom cause a Type B program to be considered high-risk.

(2) The auditor is not expected to perform risk assessments on relatively small Federal programs. Therefore, the auditor is only required to perform risk assessments on Type B programs that exceed the larger of:

(i) \$100,000 or three-tenths of one percent (.003) of total Federal awards expended when the auditee has less than or equal to \$100 million in total Federal awards expended.

(ii) \$300,000 or three-hundredths of one percent (.0003) of total Federal awards expended when the auditee has more than \$100 million in total Federal awards expended.

(e) Step 4. At a minimum, the auditor shall audit all of the following as major programs:

(1) All Type A programs, except the auditor may exclude any Type A programs identified as low-risk under Step 2 (paragraph (c)(1) of this section).

(2) (i) High-risk Type B programs as identified under either of the following two options:

(A) Option 1. At least one half of the Type B programs identified as high-risk under Step 3 (paragraph (d) of this section), except this paragraph (e)(2)(i)(A) does not require the auditor to audit more high-risk Type B programs than the number of low-risk Type A programs identified as low-risk under Step 2.

(B) Option 2. One high-risk Type B program for each Type A program identified as low-risk under Step 2.

(ii) When identifying which high-risk Type B programs to audit as major under either Option 1 or 2 in paragraph (e)(2)(i)(A) or (B), the auditor is encouraged to use an approach which provides an opportunity for different high-risk Type B programs to be audited as major over a period of time.

(3) Such additional programs as may be necessary to comply with the percentage of coverage rule discussed in paragraph (f) of this section. This paragraph (e)(3) may require the auditor to audit more programs as major than the number of Type A programs.

(f) Percentage of coverage rule. The auditor shall audit as major programs Federal programs with Federal awards expended that, in the aggregate, encompass at least 50 percent of total Federal awards expended. If the auditee meets the criteria in § .530 for a low-risk auditee, the auditor need only audit as major programs Federal programs with Federal awards expended that, in the aggregate, encompass at least 25 percent of total Federal awards expended.

(g) Documentation of risk. The auditor shall document in the working

papers the risk analysis process used in determining major programs.

(h) Auditor's judgment. When the major program determination was performed and documented in accordance with this part, the auditor's judgment in applying the risk-based approach to determine major programs shall be presumed correct. Challenges by Federal agencies and pass-through entities shall only be for clearly improper use of the guidance in this part. However, Federal agencies and pass-through entities may provide auditors guidance about the risk of a particular Federal program and the auditor shall consider this guidance in determining major programs in audits not yet completed.

(i) Deviation from use of risk criteria. For first-year audits, the auditor may elect to determine major programs as all Type A programs plus any Type B programs as necessary to meet the percentage of coverage rule discussed in paragraph (f) of this section. Under this option, the auditor would not be required to perform the procedures discussed in paragraphs (c), (d), and (e) of this section.

(1) A first-year audit is the first year the entity is audited under this part or the first year of a change of auditors.

(2) To ensure that a frequent change of auditors would not preclude audit of high-risk Type B programs, this election for first-year audits may not be used by an auditee more than once in every three years.

§ __.525 Criteria for Federal program risk.

(a) General. The auditor's determination should be based on an overall evaluation of the risk of noncompliance occurring which could be material to the Federal program. The auditor shall use auditor judgment and consider criteria, such as described in paragraphs (b), (c), and (d) of this section, to identify risk in Federal programs. Also, as part of the risk analysis, the auditor may wish to discuss a particular Federal program with auditee management and the Federal agency or pass-through entity.

(b) Current and prior audit experience. (1) Weaknesses in internal control over Federal programs would indicate higher risk. Consideration should be given to the control environment over Federal programs and such factors as the expectation of management's adherence to applicable laws and regulations and the provisions of contracts and grant agreements and the competence and experience of personnel who administer the Federal programs.

(i) A Federal program administered under multiple internal control structures may have higher risk. When assessing risk in a large single audit, the auditor shall consider whether weaknesses are isolated in a single operating unit (e.g., one college campus) or pervasive throughout the entity.

(ii) When significant parts of a Federal program are passed through to subrecipients, a weak system for monitoring subrecipients would indicate higher risk.

(iii) The extent to which computer processing is used to administer Federal programs, as well as the complexity of that processing, should be considered by the auditor in assessing risk. New and recently modified computer systems may also indicate risk.

(2) Prior audit findings would indicate higher risk, particularly when the situations identified in the audit findings could have a significant impact on a Federal program or have not been corrected.

(3) Federal programs not recently audited as major programs

may be of higher risk than Federal programs recently audited as major programs without audit findings.

(c) Oversight exercised by Federal agencies and pass-through entities.

(1) Oversight exercised by Federal agencies or pass-through entities could indicate risk. For example, recent monitoring or other reviews performed by an oversight entity which disclosed no significant problems would indicate lower risk. However, monitoring which disclosed significant problems would indicate higher risk.

(2) Federal agencies, with the concurrence of OMB, may identify Federal programs which are higher risk. OMB plans to provide this identification in the compliance supplement.

(d) Inherent risk of the Federal program. (1) The nature of a Federal program may indicate risk. Consideration should be given to the complexity of the program and the extent to which the Federal program contracts for goods and services. For example, Federal programs that disburse funds through third party contracts or have eligibility criteria may be of higher risk. Federal programs primarily involving staff payroll costs may have a high-risk for time and effort reporting, but otherwise be at low-risk.

(2) The phase of a Federal program in its life cycle at the Federal agency may indicate risk. For example, a new Federal program with new or interim regulations may have higher risk than an established program with time-tested regulations. Also, significant changes in Federal programs, laws, regulations, or the provisions of contracts or grant agreements may increase risk.

(3) The phase of a Federal program in its life cycle at the auditee may indicate risk. For example, during the first and last years that an auditee participates in a Federal program, the risk may be higher due to start-up or closeout of program activities and staff.

(4) Type B programs with larger Federal awards expended would be of higher risk than programs with substantially smaller Federal awards expended.

§ __.530 Criteria for a low-risk auditee.

An auditee which meets all of the following conditions for each of the preceding two years (or, in the case of biennial audits, preceding two audit periods) shall qualify as a low-risk auditee and be eligible for reduced audit coverage in accordance with § __.520:

(a) Single audits were performed on an annual basis in accordance with the provisions of this part. A non-Federal entity that has biennial audits does not qualify as a low-risk auditee, unless agreed to in advance by the cognizant or oversight agency for audit.

(b) The auditor's opinions on the financial statements and the schedule of expenditures of Federal awards were unqualified. However, the cognizant or oversight agency for audit may judge that an opinion qualification does not affect the management of Federal awards and provide a waiver.

(c) There were no deficiencies in internal control which were identified as material weaknesses under the requirements of GAGAS. However, the cognizant or oversight agency for audit may judge that any identified material weaknesses do not affect the management of Federal awards and provide a waiver.

(d) None of the Federal programs had audit findings from any of the following in either of the preceding two years (or, in the case of biennial audits, preceding two audit periods) in which they were classified as Type A programs:

(1) Internal control deficiencies which were identified as material weaknesses;

(2) Noncompliance with the provisions of laws, regulations, contracts, or grant agreements which have a material effect on the Type A program; or

(3) Known or likely questioned costs that exceed five percent of the total Federal awards expended for a Type A program during the year.

Appendix A to Part ___ - Data Collection Form (Form SF-SAC)
[insert SF-SAC after finalized]

Appendix B to Part ___ - Circular A-133 Compliance Supplement

Note: Provisional OMB Circular A-133 Compliance Supplement is available from the Office of Administration, Publications Office, room 2200, New Executive Office Building, Washington, DC 20503.