

Department of Commerce Federal Financial Assistance Manual

Federal Financial Assistance Manual



OAM/FAPOD

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This Manual is for internal Department of Commerce use only. It is to be used by operating units, grants offices and all involved in the lifecycle of a Federal financial assistance award. This Manual is maintained by the Financial Assistance Policy and Oversight Division (FAPOD) within the Office of Acquisition Management (OAM).

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Summary of Substantive Changes

1. Updated the name of the Manual from the DOC Grants and Cooperative Agreements Manual to the DOC Federal Financial Assistance Manual.
2. Replaced the phrase 'Grants and Cooperative Agreements' with 'Federal Financial Assistance, as appropriate.
3. Replaced the term grantee with recipient and/or subrecipient.
4. Added the requirement of 46 U.S.C. § 55305, Cargo Preference Act of 1954 to Chapter 2 (Introduction).
5. The following acronyms in Chapter 3 have either been added, deleted, updated and/or edited:
 - a. CAIVERS- Credit Alert Interactive Voice Response System
 - b. EPLS- Excluded Parties List System
 - c. FBO- FedBiz Opps (Federal Business Opportunities)
 - d. FFATA- Federal Funding Accountability Transparency Act of 2006 or Transparency Act
 - e. OCA- Office of Congressional Affairs, DOC
 - f. RIN- Regulation Identification Number
 - g. SPOC-Single Point of Contact
6. The following definitions in Chapter 3 have been either added, deleted, updated and/or edited:
 - a. Assistance Listings
 - b. Budget Period
 - c. Competitive Award
 - d. Discretionary Funds
 - e. Interested Party
 - f. Merit Review
 - g. Nondiscretionary Funds
 - h. Supplemental Amendment
7. In accordance with revisions at 2 CFR 200.205, added the following to Chapter 8.B.5, "Program offices shall provide opportunity for a diverse group of participants, including those representing underserved communities, to participate in the merit review process, as practicable."
8. Incorporated additional guidance on the application of 48 CFR Part 31 and 2 CFR Part 200 to indirect cost rates of for-profit organizations (see Chapter 9.I.1.a through d).
9. Removed language duplicative of the 2 CFR 200 Subpart F (Audit Requirements) from Chapter 13 (Audits).
10. Replaced the term 'Audit Resolution Determination' with 'Management Decision Letter'
11. Added the following DOC roles and responsibilities for Audits to Chapter 13 (Audits), Section B (Audit Roles and Responsibilities):
 - a. Single Audit Accountable Official
 - b. Senior Financial Accountable Official
 - c. Key Management Single Audit Liaison
 - d. National Single Audit Coordinator
12. Removed language duplicative of the 2 CFR Part 200.204 Notification of Funding Opportunities (NOFO) from Chapter 17 (Guidelines for the Preparation of Public Notice Announcing the Availability of Financial Assistance: Notice of Funding Opportunity (NOFO) and Federal Register Notices).
13. Removed references to the CD-450 and CD-451.
14. Added Build America, Buy America Act requirement to Chapter 16 (Construction).

1. PREFACE

A. The U.S. Department of Commerce's (DOC) broad range of responsibilities include but are not limited to effectuating policy to advance international trade, expand U.S. exports, develop innovative technologies, gather and disseminate statistical data, measure economic growth, grant patents, promote minority entrepreneurship, advance environmental stewardship of the nation's coastal and marine resources, and predict and monitor the weather. Although DOC's missions are diverse, they are unified by an overarching mandate -- to foster innovation and economic growth and create American jobs to ensure economic opportunities in all communities.

B. DOC may award Federal financial assistance (e.g., a grant or cooperative agreement) when authorized by federal statutes. While Federal agencies generally have "inherent" authority to enter into contracts to procure goods or services for their own use, there is no inherent authority to enter into financial assistance relationships. Therefore, the relevant statute is studied to determine whether an agency is authorized to transfer money, property in lieu of money, or other direct assistance to eligible recipients to support or stimulate a public purpose. DOC does not have a general financial assistance authority and the Federal Grant and Cooperative Agreement Act of 1977 (31 U.S.C. §§ 6301-6308) does not provide such authority.¹ Such authority must be provided by specific statute. The operating unit's basic legislation must be analyzed to determine whether Federal financial assistance is authorized, and if so, under what circumstances and conditions. The following DOC operating units are authorized to provide financial assistance:

1. U.S. Census Bureau (Census). Being the authority on demographic data in the United States, Census provides comprehensive statistical data about the Nation's diverse population. Its data forms the foundation for constitutional mandates, such as Congressional apportionment, and serves as a cornerstone for analyzing economic trends, facilitating informed decision-making processes for policymakers, businesses, and researchers alike. Census provides funding opportunities through cooperative agreements with appropriate entities, including any Federal, State, or local governmental unit, or institution of higher education (other entities may be considered), to aid and promote statistical, research, and methodology activities in support of its mission under the Title 13 of the United States Code.

2. Economic Development Administration (EDA). EDA's mission is to lead the federal economic development agenda by promoting innovation and competitiveness and preparing American regions for growth and success in the worldwide economy. EDA's investment policy is designed to establish a foundation for sustainable job growth and the building of durable regional economies throughout the United States. This foundation builds upon two key economic drivers - innovation and regional collaboration. Innovation is key to global competitiveness, new and better jobs, a resilient economy, and the attainment of national economic goals. Regional collaboration is essential for economic recovery because regions are the centers of competition in the new global economy and those that work

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

together to leverage resources and use their strengths to overcome weaknesses will fare better than those that do not. EDA encourages its partners around the country to develop initiatives that advance new ideas and creative approaches to address rapidly evolving economic conditions.

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

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

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

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

7. National Telecommunications and Information Administration (NTIA). NTIA is the Executive Branch agency that is principally responsible for advising the President on telecommunications and information policy issues. NTIA's programs and policymaking focus largely on expanding broadband Internet access and adoption in America, expanding the use of spectrum by all users, and ensuring that the Internet remains an engine for continued innovation and economic growth.

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

C. DOC administers a diverse array of financial assistance programs and projects in connection with the spectrum of business and economic development concerns as outlined above. DOC operating units and Grants Offices are responsible for the award, administration, and monitoring of these programs.

The administration of DOC financial assistance programs requires adherence to program objectives and sound business practices. Federal financial assistance programs must be administered in accordance with governing laws, regulations, policies, and procedures. Awards are made to a wide variety of recipients, including state and local governments, for-profit or commercial organizations, and educational institutions.

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

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

F. This Federal Financial Assistance Manual (Manual) is intended to provide a framework for the administration of DOC Federal financial assistance awards within which DOC staff and responsible recipient officials must operate.

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

2. INTRODUCTION

A. Purpose

This Manual sets forth DOC guidance on Federal financial assistance award administration and provides DOC with a uniform set of minimum procedures to govern the award lifecycle, from the requirements for announcing the availability of Federal funding, including the Notice of Funding Opportunity (NOFO) to reviewing, awarding, managing, and closing out awards. This Manual references policies and procedures for use by DOC offices and operating units to ensure the consistent implementation of legislation, regulations, Office of Management and Budget (OMB) circulars, Executive Orders (EOs), and DOC policies and procedures, as appropriate, related to Federal financial assistance. This Manual is for internal use by DOC personnel and does not create any rights or liabilities with respect to the public or any third party.

B. Authority

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

C. Coverage

This Manual applies to all DOC operating units in their award, management, and administration of financial assistance awards. This Manual shall have the same force and effect as a Department Administrative Order (DAO). Amendments or revisions to this Manual may be developed and issued by the OAM Director to comply with changes in legislation or regulations, Executive Orders, audit findings, or any interpretation thereof. Proposed amendments to this Manual will be distributed for review and comment by DOC operating units, the Office of the General Counsel, and appropriate stakeholders.

D. Effect on Other Issuances

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

E. Requirements for the Administration of DOC Awards

As a condition of receiving Federal financial assistance awards, DOC enforces recipient compliance with government-wide and DOC-wide rules and regulations that govern Federal awards. Operating units, as well as recipients and subrecipients of federal awards, must administer and implement DOC financial assistance awards in accordance with applicable statutes, regulations, EOs, and OMB circulars. A list of requirements includes but is not limited to the following:

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

In accordance with the Federal Register notice published on December 19, 2014 (79 FR 75871) and the regulation at 2 CFR § 1327.101, effective December 26, 2014, DOC adopted the Uniform Guidance issued by the OMB to help ensure consistent government-wide policies and procedures for the management of operating units' Federal financial assistance. Pursuant to 2 CFR § 200.109 (Review date), the Uniform Guidance must be reviewed periodically. As a result, revisions to the Uniform Guidance were published on April 22, 2024, with an effective date of October 1, 2024, unless otherwise specified in an award.

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

The Uniform Guidance includes cost principles set out in Subpart E, but does not address the Contract Cost Principles, which generally apply to for-profit organizations. At 2 CFR § 200.101(a)(2), the Uniform Guidance provides that agencies may apply Subpart A through Subpart E of 2 CFR Part 200 to for-profit organizations. Therefore, the Grants Officer, in consultation with the Program Office, may elect to apply the cost principles under the Uniform Guidance (*see* Subpart E to 2 CFR Part 200) or the Contract Cost Principles when making an award to a for-profit organization.

3. Other Requirements.

- a. OMB Circular A-50 Revised (Audit Follow Up), except as superseded by 2 CFR Part 200 (*see* 2 CFR § 200.104 (Supersession));
- b. OMB Circular A-129 Revised (Policies for Federal Credit Programs and Non-Tax Receivables);
- c. 2 CFR Part 1326 (Nonprocurement Debarment and Suspension);
- d. 2 CFR Part 1329 (Governmentwide Requirements for Drug-Free Workplace (Financial Assistance));
- e. 5 CFR Part 1320 (Controlling Paperwork Burdens on the Public);
- f. 15 CFR Part 8 (Nondiscrimination in Federally Assisted Programs of the Department of Commerce – Effectuation of Title VI of the Civil Rights Act of 1964);
- g. 15 CFR Part 8a (Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance);
- h. 15 CFR Part 8b (Prohibition of Discrimination Against the Handicapped in Federally Assisted Programs Operated by the Department of Commerce);
- i. 15 CFR Part 11 (Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs);
- j. 2 CFR Part 200, Appendix 1, D.5 (Intergovernmental Review);
- k. 15 CFR Part 20 (Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance);
- l. 15 CFR Part 19 (Commerce Debt Collection);
- m. 15 CFR Part 25 (Program Fraud Civil Remedies);
- n. 15 CFR Part 27 (Protection of Human Subjects);
- o. 15 CFR Part 28 (New Restrictions on Lobbying);
- p. 15 CFR Part 273 (Metric Conversion Policy for Federal Agencies);
- q. 31 CFR Part 223 (Surety Companies Doing Business with the United States);

- r. 31 CFR Part 900-904 (Federal Claims Collection Standards);
 - s. 37 CFR Part 401 (Rights to Inventions Made by Nonprofit Organizations and Small Business Firms under Government Grants, Contracts, and Cooperative Agreements);
 - t. 46 U.S.C. § 55305 - Cargo Preference Act of 1954
 - u. EO 13990 (Jan 20, 2021, Protecting Public Health and the Environment and Restoring Science to Tackle Climate Crisis));
 - v. EO 13693 (Mar 19, 2015, Planning for Federal Sustainability in the Next Decade);
 - w. EO's 12549 and 12689 (Debarment and Suspension);
 - x. EO 13798 (May 4, 2017, Promoting Free Speech and Religious Liberty) and OMB M-20-09;
- and
- y. Assurances contained in OMB Standard Forms: Form SF-424B (Assurances – Non-Construction Programs) and Form SF-424D (Assurances – Construction Programs), which reference laws and regulations that may apply to particular awards.

4. DOC General Terms and Conditions (GT&Cs).

The DOC GT&Cs list statutes, regulations, EOs, OMB circulars, provisions of the Uniform Guidance, and any other incorporated terms and conditions that apply to DOC financial assistance awards. Any recipient of a DOC financial assistance award must comply, and require each of its subrecipients to comply, with the DOC GT&Cs.

5. Research Terms and Conditions (RT&Cs) for Federal awards.

The RT&Cs for Federal awards address and implement the Uniform Guidance. The RT&Cs provide supplementary guidance and include flexibility for agency specific requirements. DOC implements the government-wide core set of research terms and conditions for all research financial assistance awards subject to 2 CFR Part 200, in addition to any DOC and operating unit specific terms and conditions that may apply.

6. For awards designated on the Notice of Award as Research, both the DOC GT&Cs and the RT&Cs as implemented by DOC, apply to the award. The RT&Cs as well as the DOC's implementation statement, operating unit specific requirements, prior approval matrix, subaward requirements, and national policy requirements are posted on the National Science Foundation's [website](#). The DOC GT&Cs and the RT&Cs are generally intended to harmonize with each other; however, where the DOC GT&Cs and the RT&Cs differ in a Research award, the RT&Cs prevail, unless otherwise indicated in a specific award condition.

7. Order of Precedence. While conflicting guidance is not intended, any inconsistency or discrepancy in the provisions of this Manual will be resolved by giving precedence in the following order: (a) public laws, (b) regulations, (c) applicable notices published in the Federal Register, (d) EOs, (e) OMB circulars, (f) DOC GT&Cs, (g) operating unit standard award conditions (if any), and (h) any specific award conditions.

Specific award conditions may take precedence over DOC GT&Cs, on a case-by-case basis, when allowed by the DOC GT&Cs, statute, regulation, or other legal authority.

8. Annual appropriations acts. An annual appropriations act may include general provisions which dictate national policy requirements that apply to the use of funds appropriated by the act. Because these requirements can be of limited duration and because they can vary from year to year and from one agency's appropriations act to another agency's appropriations act, the Grants Officer must know the agency or agencies and fiscal year(s) of the appropriation being obligated and may need to consult with the Federal Assistance Law Division (FALD) or the Budget Office if the requirements applicable to those appropriations are unknown.

9. Human Subjects Research. DOC or individual operating units may adopt further requirements and policies related to Federal awards involving human subjects research.

3. GLOSSARY OF ACRONYMS AND DEFINITIONS

This Manual provides a list of acronyms and a set of definitions for terms not included in the Uniform Guidance. The terms “pass-through entity”, “non-Federal entity,” “recipient,” and “subrecipient” in this Manual are used consistent with their meanings in the OMB Uniform Guidance, unless otherwise stated. Refer to the Uniform Guidance, Subpart A (Acronyms and Definitions) for an expanded record of definitions and acronyms used in the administration of Federal financial assistance awards.

A. Acronyms

AGC/TPM –Assistant General Counsel for Transactions and Program Management

AGC/L&R – Assistant General Counsel for Legislation and Regulation

ASAP – Automated Standardized Application for Payment

BAA – Broad Agency Announcement

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

CFR – Code of Federal Regulations

CRADA – Cooperative Research and Development Agreement

DAO - Department Administrative Order

DOC - Department of Commerce

DOO - Department Organization Order

EO - Executive Order

FALD - Federal Assistance Law Division

FAPOD – Financial Assistance Policy and Oversight Division

FOIA - Freedom of Information Act

GAO – Government Accountability Office

GSA - General Services Administration

GT&Cs - DOC Financial Assistance General Terms and Conditions

MOU - Memorandum of Understanding

NOFO – Notice of Funding Opportunity

OAM - Office of Acquisition Management

OGC - Office of the General Counsel

OIG - Office of Inspector General

OLIA - Office of Legislative and Intergovernmental Affairs

OMB - Office of Management and Budget

PA - Privacy Act

PRA - Paperwork Reduction Act

SAM - System for Award Management

SPOC - State Point of Contact

RT&Cs - Research Terms and Conditions for Federal awards

TOP - Treasury Offset Program

U.S.C. - United States Code

B. Definitions

Administrative Offset. “[W]ithholding funds payable by the United States (including funds payable by the United States on behalf of a state government) to, or held by the United States for, a person to satisfy a claim” (31 U.S.C. § 3701(a)(1)). The term “administrative offset” can include but is not

limited to the offset of many types of Federal payments such as Federal wage, salary, and retirement payments and vendor and expense reimbursement payments. The terms “centralized administrative offset” and “centralized offset” refer to the process by which the U.S. Department of the Treasury’s Bureau of the Fiscal Service (BFS) offsets Federal payments through the Treasury Offset Program. Any federal agency that is owed a nontax debt that is more than 120 days overdue is required to notify the BFS of the debt for purposes of offset.

Amendment.

a. **For a Federal award**, an amendment is an award document which changes any substantive aspect of an existing award. Examples of an amendment to a Federal award may include but are not limited to the following: award continuation, renewal, supplemental amendment, no-cost extension, change of scope, or budget revision.

b. **For a Notice of Funding Opportunity (NOFO)**, an amendment is a document which changes any aspect of a published NOFO including but not limited to eligibility requirements, required forms, change to deadlines, or the evaluation criteria.

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

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

Competitive Award. An award made with discretionary funds after a competitive NOFO is posted at Grants.gov. Applications undergo a merit review in accordance with established evaluation and selection criteria published in the NOFO. DOC may also consider making competitive awards solicited and reviewed through another federal agency’s competitive process or through a process developed by several federal agencies acting in partnership.

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

Continuation. An amendment to an existing award that provides continued funding within the approved period of performance. A continuation does not extend the period of performance. Continuation amendments are generally used with incrementally funded awards.

Delinquent Debt. An established debt owed to the Federal government, 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. The date of delinquency is relevant to when interest and penalties generally begin to accrue, and when an agency will be required to refer the debt to BFS’s delinquent debt collection programs.

Department or DOC. Refers to the U.S. Department of Commerce, unless otherwise indicated. As used in this Manual, “Department” or “DOC” includes the Office of the Secretary of Commerce and the operating units.

Discretionary Award Program. A financial assistance program under which DOC can exercise its discretion in selecting eligible entities to whom funds may be awarded.

Discretionary Funds. Funds for which DOC can exercise its judgment in selecting to whom the funds are awarded. See Chapter 6 for more information on Discretionary Funds.

Fixed Year Funds. Funds, by the terms of an Appropriations Act, available for obligation for a definite or specified period of time, typically one-year, but it may be for multiple years. This term is synonymous with “time limited funds” as used in this Manual.

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

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

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

Incrementally-funded Award. A financial assistance award that is partially funded as of the award date and subsequently funded in increments. This does not include awards that are fully funded as of the award date.

Institutional Award. A financial assistance award under which funds are awarded based on competition with the intent to maintain a long-term partnership between DOC and the recipient. New awards may be made on a noncompetitive basis if the recipient performs the responsibility set out in the award, to DOC’s satisfaction, submits the appropriate documentation, and periodic reviews validate the effectiveness and continued desirability of institutional awards for the program.

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

Merit Review. A thorough, consistent, and independent examination of an application for Federal financial assistance based on pre-established criteria by persons knowledgeable in the field of endeavor for which support is requested. A merit review must be conducted by an impartial, objective, unbiased individual with the requisite expertise, knowledge, and experience in a technical

field who can evaluate or assess a proposal for its value, quality, and likelihood of success. One who conducts a merit review must not have a conflict of interest, or the appearance of a conflict of interest, regarding any application under his or her review. See Chapter 8 for more information on Merit Reviews.

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

No-Cost Extension. An amendment to an existing Federal award that extends the period of performance and budget period with no additional funding. See 2 CFR 200.1 for definition of budget period.

Noncompetitive Award. An award made without the involvement of competition.

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

Nondiscretionary Funds. Funds for which the governing statute specifies the intended recipient or limits the eligibility to all members of a particular class or classes of recipients. See Chapter 6 for more information on Nondiscretionary Funds.

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

Pre-Award Period. The approved period of time allotted to the award prior to the beginning of the period of performance as listed on the Notice of Award.

Program Officer. The DOC official responsible for the technical, scientific, or other programmatic aspects of a Federal award or financial assistance program.

Renewal Amendment. An amendment to an existing award which extends the period of performance and budget period and adds additional funds to the award.

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

Supplemental Amendment. An amendment to an existing award which provides supplemental funding over and above the approved budget during the current budget period.

Suspension of Award. An enforcement action to temporarily suspend Federal sponsorship (as opposed to suspension of payments) under the award pending either corrective action by the recipient, or a decision to terminate the award. All activities under the award must cease and no

costs may be incurred by the recipient during the suspension of an award unless expressly authorized by the Federal awarding agency or pass-through entity in the notice of suspension.

Suspension of Payment. An enforcement action to temporarily withhold payment of funds under the award pending correction of identified deficiencies by the recipient. Activities under the award may continue and the recipient may continue to incur costs during the suspension of payment.

4. RESPONSIBILITIES IN FEDERAL FINANCIAL ASSISTANCE ADMINISTRATION

A. Chief Financial Officer and Assistant Secretary for Administration

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

Under DOO 10-4 (Assistant Secretary for Economic Development) EDA has been delegated authority by the Secretary of Commerce to administer the Public Works and Economic Development Act and pertinent provisions of the Trade Act and the America Creating Opportunities to Meaningfully Promote Excellence in Technology, Education, and Science (COMPETES) Reauthorization Act of 2010, among other matters. This includes grants administration for such programs. In addition, NIST and NOAA are delegated through DOOs 30-2A (National Institute of Standards and Technology) and 10-15 (Under Secretary of Commerce for Oceans and Atmosphere and Administrator of the National Oceanic and Atmospheric Administration) respectively, the authority to enter into grants and cooperative agreements.

2. The CFO/ASA hereby delegates the authority to approve exceptions to awards subject to the provisions of 2 CFR § 200.102 (Exceptions) to the Grants Officer identified by the head of the operating unit. This delegation of authority may not be re-delegated by the Grants Officer.

B. Office of Acquisition Management

OAM is delegated the authority to develop, issue and oversee implementation of policies and procedures for the administration of DOC financial assistance programs and to oversee implementation of DOC's audit follow-up for financial assistance programs. The OAM Director serves as the Chair of the DOC Grants Council, the governing body for Federal financial assistance policy development and implementation. DOO 10-5 § 1.02.f states that the CFO/ASA "assigns responsibility for financial assistance administrative and operational policies to the Director for Acquisition Management." FAPOD, located within OAM, is responsible for the administrative and operational policies for DOC financial assistance programs.

The following functions will be performed by FAPOD:

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

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

3. Provide to OMB and other Federal agencies DOC's consolidated comments concerning proposed new government-wide policies and procedures and proposed revisions to policies and procedures related to Federal financial assistance.

4. Notify appropriate operating unit and DOC staff of changes and revisions to government-wide financial assistance policies and procedures or other matters related to financial assistance.
5. Conduct or participate in reviews, task force groups, or other assessments to assure compliance with policies and procedures established for the administration of DOC financial assistance programs.
6. Evaluate, in consultation with other offices as appropriate, status updates provided on implementation of financial assistance audit findings.
7. Develop reports on implementation activities of financial assistance audit recommendations as necessary for reporting to Congress by the Secretary of Commerce.
8. Serve as the DOC liaison and single point of contact for DOC with OMB, the Government Accountability Office, the U.S. Department of the Treasury, the U.S. Department of Health and Human Services (including Grants.gov), and other agencies on financial assistance matters.
9. Coordinate the collection and submission of the information for DOC financial assistance transactions to the official government-wide open data source of federal spending information, USAspending.gov.
10. Prepare, issue, and maintain this Manual, and interpret and amend its policies, standards, and procedures, as needed.
11. Consider requests for waivers to the provisions of this Manual, as permitted by governing statutes and regulations, and notify the relevant Head of the operating unit of the decision to approve or deny the request. If a waiver is denied, a written explanation will be provided to the requester.
12. Convene DOC-wide Grants Council meetings.
13. Review materials prepared pursuant to the requirements of this Manual for conformance to financial assistance regulations, policies, standards, and procedures. These reviews apply to all DOC financial assistance programs and shall include but not be limited to the following documents:
 - a. Proposed *Federal Register* notices, related to administration of financial assistance programs, including announcements of funding availability, information collection activities, and program regulations;
 - b. Application packages that contain any program-specific forms or requirements beyond those listed in Chapter 9 of this Manual;
 - c. Proposed publications that include financial assistance award management or administration procedures or instructions with respect to individual programs or groups of programs; and
 - d. Other documents as appropriate.
14. Coordinate with the appropriate Grants Officers, Program Offices and if needed, FALD, within the Office of the Assistant General Counsel for Transactions and Program Management (AGC/TPM), on

establishing program numbers and updating Assistance Listings text and financial assistance information in SAM.gov.

C. Office of the General Counsel

Pursuant to DOO 10-6 (Office of the General Counsel), OGC functions include the preparation or examination for legal form and effect, of all transactional legal instruments including, but not limited to, contracts, financial assistance agreements, interagency and other special agreements, leases, licenses, bonds, and settlement agreements resolving litigation or claims against DOC, entered into by DOC. These awards create legally binding rights and obligations between the government and the recipient. Federal financial assistance awards must be authorized under specific statutory authority, may require the issuance by publication in the *Federal Register* of applicable rules and notices, and are bound by administrative regulations, DOC policies, EOs, OMB Circulars, and the Uniform Guidance. The award, administration, and audit of these agreements may give rise to legal issues, rights, liabilities, and the possibility of disputes, which presents the need for timely legal advice and guidance.

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

a. AGC/L&R coordinates and manages compliance with regulatory requirements. This includes coordination, clearance, and submission of items proposed for publication in the *Federal Register* in accordance with the requirements of DOO 10-6, Section 4.01, Subsections a. and g. AGC/L&R also coordinates and serves as a liaison relative to OMB's review of certain NOFOs as discussed in Chapter 17 of this Manual.

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

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

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

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

(4) Legal advice and services to the Debt Workout Groups in accordance with the DOC *Credit and Debt Management Operating Standards and Procedures Handbook*, which is located on the DOC website at <http://www.osec.doc.gov/ofm/credit/cover.html>. This includes assistance with final terminations, settlements, compromises of claims, and referrals of claims to the U.S. Department of Justice for collection. The General Litigation Division (Gen Lit), within AGC/ELI, also provides legal advice and services relative to debt workout, debt collection, and bankruptcy. In addition, the Real Property, Energy and Environmental Law Division (RPEELD), within AGC/TPM is available for consultation regarding property and environmental concerns laws (e.g., the National Environmental

Policy Act of 1969 and state analogs, and the Comprehensive Environmental Response, Compensation and Liability Act of 1980). Coordination with Gen Lit and RPEELD may be pursued directly by Program Officials or Grants Officers or may be coordinated through FALD.

EDA's Office of Chief Counsel (OCC) provides direct legal services with respect to EDA financial assistance awards to EDA program and grants officials. References to FALD throughout this Manual generally include EDA's OCC with respect to EDA programs, in that, FALD collaborates with, and provides oversight of EDA counsel's advice and guidance on DOC Federal financial assistance award requirements.

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

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

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

c. Audit appeal determinations under DAO 213-5 (Audit and Evaluation Resolution and Follow-Up).

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

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

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

c. Proposed financial assistance competitive awards where the amount of Federal funding exceeds the simplified acquisition threshold and all noncompetitive awards, *see also* 41 U.S.C. § 134 (the simplified acquisition threshold). OGC will consider requests to raise the award review threshold or to waive the legal review requirement for competitive awards on a program-by-program basis, with the concurrence of the Program Office, for ongoing programs that have not had significant legal issues or audit problems in the past three years. OGC will also consider requests to change the requirement for legal review of individual amendments to institutional awards that are under the simplified acquisition threshold, but where the underlying award totals more than the simplified acquisition threshold, as appropriate. OGC review is not required for continuation amendments under multi-year awards, unless the amendment involves substantive changes to the terms and conditions of an award, significant changes to the scope of work or budget, change in program priorities, enforcement actions, or other noteworthy actions. Grants Officers may submit a written request to the FALD Chief setting forth a justification for raising the award review threshold or for waiving the FALD review requirement, or FALD staff may recommend such actions to the FALD Chief, who may provide written approval of such a request when warranted.

d. Interagency or other special agreements (IAAs) typically executing the transfer of funds in or out of DOC. Among other purposes, IAAs may be used to facilitate one party making a financial assistance award on behalf of another. IAAs may include memoranda of agreement, memoranda of understanding, joint project agreements, interagency purchase orders that document acceptance by all parties, or any other document that details the terms of an agreement and the parties' acceptance. Such agreements can transfer funds from one party to the other, bind one or both parties to commit funds or resources to a grant or cooperative agreement, or not involve any resources but describe specific responsibilities assigned to various parties in accordance with the terms of the agreement. All IAAs require review and approval by the AGC/TPM General Law Division (GLD).

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

e. Pre- and post-award risk assessments resulting in the imposition of additional specific award conditions pursuant to 2 CFR § 200.206 (Federal agency review of risk posed by applicants) and §200.208 (Specific conditions);

f. Notices of suspension or termination of awards;

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

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

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

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

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

(2) Appropriations act; and

(3) Any legislative restrictions on appropriations.

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

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

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

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

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

g. Amendments to existing Federal financial assistance awards involving significant or unique issues; and

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

D. Office of Inspector General

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

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

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

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

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

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

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

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

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

F. Grants Office

The Grants Officer oversees the business management and administrative aspects of Federal financial assistance awards. The Grants Officer or designee will coordinate, as appropriate with the Program Officers and other appropriate DOC offices. Grants Officers shall carry out the responsibilities identified in Paragraphs 1, 2, 3, and 4 of this section without any re-delegation to other parties. The responsibilities outlined in Paragraphs 5 through 25 may be delegated by the Grants Officer to appropriate members of the Grants Officer's staff. Although these responsibilities may be delegated, these duties ultimately remain the responsibilities of the Grants Officer.

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

Grants Officer administration responsibilities are as follows:

1. Approve awards and any amendments thereto which obligate or deobligate funds.
2. Suspend or terminate individual awards, excluding debarment or suspension of a recipient as provided in 2 CFR Part 1326.
3. Approve final pre-award risk assessment (completed in accordance with 2 CFR § 200.206 (Federal agency review of risk posed by applicants)) and the imposition of specific award conditions (in accordance with 2 CFR § 200.208 (Specific conditions)).
4. Approve, as appropriate, exceptions pursuant to the delegation of authority from the CFO/ASA in accordance with this chapter.
5. Provide grants administration guidance and support to Program Officers, recipients, and others as needed.
6. Maintain the official award files (electronic and/or hard copy).
7. Ensure that each financial assistance award is prepared and administered in accordance with applicable statutes, regulations, OMB guidance, EOs, and DOC policies.
8. Perform cost analyses of proposed budgets to ensure costs in the award budget are reasonable, allowable, and allocable in accordance with the applicable cost principles.

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

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

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

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

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

e. Recommend to the Grants Officer and to the Program Official the appropriate funding instrument to be used in a particular transaction, i.e., grant, cooperative agreement, or contract.

f. Develop appropriate specific award conditions defining the role of the Federal Government when the level of involvement is determined to be substantial, and award of a cooperative agreement is warranted;

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

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

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

10. Ensure the recipient's compliance with award terms and conditions and recommend appropriate action to the Grants Officer when there is a potential or actual occurrence of non-compliance.

11. Review, as necessary, compliance with applicable administrative requirements for a recipient's contracts and subawards and requests for foreign travel, and requests for extension of reporting periods.

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

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

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

- c. Recipients are not maintaining excess cash on hand.
- d. Reports submitted by the recipient agree with DOC accounting records of disbursements.
- e. Reports contain information on indirect costs and program income if these items are included in the approved budget; and
- f. Reports are completed correctly.

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

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

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

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

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

18. Review the audit report, the recipient's response, and the Program Officer's comments and prepare the management decision (*see* Subpart F to 2 CFR Part 200).

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

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

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

- a. Proposed *Federal Register* notices, as required, and Notices of Funding Opportunities;
- b. Application kits/packages;
- c. Publications (including information on DOC, operating unit, or program Internet website) that include information on financial assistance award management or administration;

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

e. Other documents as appropriate.

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

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

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

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

G. Liaison Responsibilities

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

1. Policy Implementation.

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

b. Review relevant draft regulations;

c. Ensure each program's compliance with Federal, DOC, and operating unit financial assistance administration requirements; and

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

2. Monitoring.

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

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

3. Liaison and Coordination.

a. Answer questions and inquiries on financial assistance-related matters;

- b. Coordinate, as appropriate, the operating unit's consolidated funding and other financial assistance-related activities;
 - c. Assure appropriate coordination of proposed publications for the *Federal Register*, as required, through OAM, OGC, and other required DOC offices; and
 - d. Disseminate information from OAM to appropriate operating unit personnel and offices.
4. Information Collection, Analysis, and Dissemination.
- a. Coordinate preparation and submission of reports on Federal financial assistance-related matters to DOC.

H. Program Office

The Program Office is responsible for monitoring and oversight of the performance under an award such as tracking the recipient's progress, comparing the actual accomplishments with the goals and objectives established in the award, and advising the Grants Officer on all programmatic aspects of the awards.

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

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

1. Ensure compliance with all relevant programmatic statutes, regulations, EOs, and policies (e.g., civil rights and environmental issues). These factors should be considered at an early stage in the application or proposal review process. This includes encouraging applicants to build environmental considerations into their own planning processes in a way that facilitates National Environmental Policy Act and other environmental compliance requirements. The operating unit, with appropriate DOC oversight, is ultimately responsible for environmental compliance and has a duty to enforce recipient compliance as a condition of funding.
2. Provide programmatic guidance and technical assistance to recipients, Grants Officers, and other officials, as necessary.
3. Establish programmatic policy within the scope of authorizing legislation and DOC goals and objectives.

4. Develop the evaluation process, criteria, and weights or relative values used for competitively selecting applications.
5. Prepare *Federal Register* notices, as required, in accordance with Chapter 17 of this Manual, announcing the availability of funds.
6. Prepare NOFO for posting in accordance with Chapter 17 of this Manual.
7. Prepare the program application package, in consultation with the Grants Office and FALD, including any requests for OMB clearance of information collection activities that may be required by the program or by individual financial assistance awards under the program.
8. Develop and coordinate the competitive review process in accordance with Chapter 8 of this Manual, select qualified reviewers who have no conflicts of interest, ensure each application receives the appropriate independent or technical and objective review, and verify the ranking or selection of applications is based on the published selection criteria.
9. Develop and provide to the Grants Officer written justification for proposed noncompetitive awards of discretionary funds and provide basis for justification, in accordance with Chapter 6 of this Manual.
10. Receive and review applications. Also review justifications for compliance with existing program guidelines, regulations, and legislation, as well as proposed budgets to determine if the proposed costs are reasonable, allowable, and allocable for accomplishing the objectives of the proposed award.
11. Establish criteria for evaluating project performance. *See* 2 CFR § 200.301 (Performance measurement).
12. Provide to the Grants Officer, for the official award file, a complete and accurate funding recommendation package in accordance with instructions contained in Chapter 9 of this Manual. This includes the packages summarizing the results of the review process, for both competitive and non-competitive awards as described in Chapter 8 of this Manual.
13. Provide or make available all internal memoranda and correspondence (scanned or original signatures required when available) regarding specific award files, recipient performance reports, written evaluations of performance reports and of any on-site visits for the official award file.
14. Notify unsuccessful applicants of the decision not to fund an application in accordance with Chapter 8 of this Manual.
15. Monitor program and/or project activities to ensure goals and objectives are being achieved and the project is being executed properly.
16. Provide written background and recommendations to the Grants Officer on programmatic issues, such as amendments to the project description or budget.

17. Review and evaluate all reports, including financial, performance or technical reports, property, and patent reports submitted by the recipient for consistency with the approved project and provide copies to the Grants Officer.

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

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

20. Review, analyze, and comment on audit reports provided by the Grants Office, the recipient's response to audit reports, and audit management decisions (see Subpart F to 2 CFR Part 200).

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

22. Recommend suspension or termination of the award to the Grants Office, when appropriate.

23. Provide the Grants Office and the Budget Office with a copy of any agreement effecting a transfer of funds from other Federal agencies or DOC operating unit for award(s). Identify any restrictions placed on funds that are transferred from other Federal agencies for inclusion in a DOC financial assistance award.

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

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

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

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

I. Property Management Office

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

recipient or subrecipient. This includes communicating to recipients, or pass-through entities for subrecipients, the property trust relationship that exists when real property, equipment, supplies or intangible property is acquired or improved under an award and the operating unit's requirements regarding the recording of liens or other appropriate notices of record to indicate real or personal property has been acquired or improved with a Federal award and use and disposition conditions apply to the property. *See* 2 CFR § 200.316 (Property trust relationship).

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

3. If requested by the Grants Officer, establish and maintain property accountability records, provide property disposition instructions to recipients, or pass-through entities for subrecipients, and provide a copy of the instructions to the Grants Officer.

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

5. RELATIONSHIPS WITH OUTSIDE ENTITIES

A. Overview

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

2. The Federal Grant and Cooperative Agreement Act of 1977 31 U.S.C. §§ 6301-6308, (the Act) requires executive branch agencies to distinguish procurement relationships from financial assistance relationships with non-Federal entities and provides guidance on helping make these distinctions. The Act requires the use of procurement contracts for all agency acquisition activity and directs agencies to select the appropriate instrument for specific types of Federal financial assistance within the limits of the applicable legal authorities.

3. This chapter summarizes and augments the guidance in the Act on distinguishing between situations in which a procurement contract, a grant, a cooperative agreement, or other type of agreement may be the appropriate instrument.

B. Grant

A grant is the legal instrument of financial assistance reflecting a relationship between DOC and a recipient or between a pass-through entity and subrecipient whenever: (a) the principal purpose of the relationship is to transfer anything of value in order to accomplish a public purpose of support or stimulation authorized by a Federal statute, and (b) substantial involvement is not anticipated between DOC and the recipient during the performance of the contemplated activity.

C. Cooperative Agreement

A cooperative agreement is the legal instrument of Federal financial assistance reflecting a relationship between DOC and a recipient or between a pass-through entity and subrecipient, whenever: (1) the principal purpose of the relationship is to transfer anything of value to accomplish a public purpose of support or stimulation authorized by Federal statute, and (2) substantial involvement (e.g., collaboration, participation, or intervention by DOC in the management of the project) is anticipated between DOC and the recipient during performance of the contemplated activity. See 31 U.S.C. § 6305 and 2 CFR § 200.1 (Definitions – Cooperative agreement). Cooperative agreements are subject to the same laws; regulations; and OMB, Treasury, and other Federal directives as grants. The following information may be helpful in deciding whether there is substantial involvement in the scope of work of a proposed award.

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

2. Listed below are examples of involvement which may be substantial, depending upon the circumstances, and examples of situations which would not be considered substantial. The examples are not meant to be a checklist nor does the presence of a single factor necessarily constitute substantial

involvement. Rather, they illustrate concepts that, in varying degrees or combinations, could suggest the use of either a grant or a cooperative agreement. For more detailed examples, see the OMB guidelines.

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

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

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

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

(4) Notification of changes to key recipient personnel.

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

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

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

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

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

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

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

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

D. Procurement Contracts

A legal instrument reflecting a relationship between DOC and a business, organization or individual when: (a) the principal purpose of the relationship is the acquisition, by purchase, lease, or barter, of

property or services for the direct benefit or use of the Federal Government, or (b) it is determined in a specific instance that it is appropriate to use a type of procurement contract. Such a contract is governed by the Federal Acquisition Regulation. See 31 U.S.C. § 6303.

E. Other Types of Agreements

There are transactions and agreements other than grants, cooperative agreements, and procurement contracts under which DOC can enter into a relationship with outside entities. The Grants Officer, OGC (FALD, Contract Law, and GLD), and OAM can offer advice and assistance with respect to the appropriate instrument to be used in a specific set of circumstances. Some of these agreements are referred to as Memoranda of Understanding (MOUs). Programs should not engage in MOU discussions or enter into MOUs if financial assistance is anticipated for an activity or program; instead, in most cases a competition should be planned. The MOU format is not appropriate as a substitute for procurement contracts or financial assistance awards and is not to be used as a sole source or noncompetitive justification for awarding procurement contracts or financial assistance. The cognizant Grants Officer, OGC (FALD and GLD), and OAM should be contacted in situations involving an agreement pursuant to the Economy Act (31 U.S.C. § 1535) or other funds transfer authority that results in the award of financial assistance. In addition, questions about specific types of agreements may be referred to the OGC and OAM. Additional guidance on other types of agreements may be found in the “Final U.S. Department of Commerce Agreements Handbook” (November 2011). Examples of other types of agreements include, but are not limited to, the following:

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

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

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

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

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

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

6. TYPES OF FINANCIAL ASSISTANCE FUNDS AND AWARDS

Federal funding for financial assistance may be classified based on the amount of discretion DOC has in making funding decisions. The two broad classifications for types of funds are “discretionary funds” and “nondiscretionary funds.”

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

A. Discretionary Funds

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

1. **Competitive Awards.** These awards are made after completion of a competitive merit review process and DOC has selected an application for award based on established evaluation and selection criteria. DOC may also designate competitive awards solicited and reviewed through another federal agency’s competitive process or through a process developed by several Federal agencies acting in partnership. See Chapter 17 of this Manual for instructions in preparing *Federal Register* notices, as required, and NOFOs. Program officials are encouraged to further publicize notices through Internet announcements, mailing lists, presentations at conferences, professional journals, trade association newsletters, and other media that are available and accessible to potential applicants.

2. **Institutional Awards.**

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

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

(2) The initial NOFO shall be competitive and state the intent to establish institutional award status.

(3) If a recipient of an institutional award is not complying with the terms and conditions of the award, that recipient should receive due process as described in Chapter 11, Enforcement. If the award is terminated, a new recipient should generally be selected through full and open competition.

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

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

b. Institutional awards are not the same as multi-year awards, although they may be incrementally funded within the period of performance. Other projects of long-term duration may be funded using DOC multi-year funding procedures described in Chapter 18 of this Manual.

3. Noncompetitive Awards.

a. When noncompetitive awards are recommended for funding, the Program Officer must submit a detailed justification memorandum, to the Grants Office for review and approval. Noncompetitive awards using discretionary funds for a new award are allowed in only the following situations:

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

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

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

B. Nondiscretionary Funds

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

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

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

eligible applicants for additional funding as an incentive for receiving applications for innovative or pilot/demonstration projects depending upon the program and its authorizing law.

7. TYPES OF APPLICATIONS

Applications for DOC Federal financial assistance may be classified into four major categories:

1. Pre-applications
2. Competitive Applications
3. Noncompetitive Applications
4. Supplemental Applications

Review, selection, approval, and notification procedures for all applications shall be as prescribed in Chapter 8 of this Manual.

A. Pre-applications

Program Offices may request pre-applications for one or more of the following reasons:

- to establish productive communications between the Program Office and prospective applicants.
- to determine an applicant's eligibility;
- to provide a Program Office with insight into the potential number and type of full applications that may be submitted, so that the Program Office may sufficiently prepare for merit reviews; and/or
- to provide feedback to an applicant on how well a proposed project is likely to compete with other similar projects.

Pre-applications may assist potential applicants by allowing Program Offices to provide feedback on whether the project ideas align with the goals and objectives of a particular program. This feedback may help applicants determine if they may be considered competitive for Federal funding and to discourage applications that have little or no chance of funding. Such Pre-application review is intended to allow applicants to avoid incurring significant expenditures in preparing applications that are not consistent with the operating unit's program goals and objectives. This pre-application is sometimes referred to as a letter of intent.

1. **Pre-application Assessment.** Pre-application assessments are completed by program staff who may obtain assistance from other reviewers. The assessment is intended to provide feedback or appropriate technical assistance to applicants. It is not a process to help in the development of an application. The potential applicant still has a right to submit a complete application under the program, regardless of any feedback received during the pre-application process.

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

B. Competitive Applications

Competitive applications are reviewed based on published evaluation and selection criteria. These applications may be for new awards or for amendments.

1. Applications for New Competitive Awards.

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

b. All applications must be treated fairly and equitably under the application review process described in the NOFO.

2. Applications for Competitive Renewal Amendments. Competitive renewal amendments are treated the same as a new competitive award. This type of application may be accepted unless prohibited by the program's legislation, regulations, or other published policy. Applications for competitive renewal amendments must compete for funding with applications submitted by other eligible applicants and must be submitted in accordance with any established deadlines and will be subjected to the applicable review requirements for competitive awards. If the application is approved for funding, the Grants Officer must fund the extended period of support as a new budget period and an extension of the original period of performance. Competitive renewal amendments are only appropriate in cases where the program's priorities do not vary from year to year, thus allowing a recipient to perform the identical work (for which it was funded in prior years) in the current competitive funding year.

C. Noncompetitive Applications

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

1. Applications for New Noncompetitive Awards. Noncompetitive applications for discretionary funds are to be approved only in unusual and extraordinary circumstances and only after the Program Officer and the Grants Officer determine:

a. a noncompetitive award of discretionary funds is warranted;

b. the application is consistent with DOC missions and plans;

c. and the official award file contains the appropriate justification documentation as required in Chapter 8 of this Manual.

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

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

4. Applications for Continuations (Incrementally Funded Awards). A continuation amendment is made without competition and provides continued funding within an approved period of performance, such as when incremental funding was approved at the time of award issuance. Chapter 18 of this Manual provides procedures for incrementally funding awards when full funding of the period performance is not available at the time of initial award.

5. Applications for No-cost Extensions. Unless restricted by statute, regulations, or the terms and conditions of an award, a recipient may notify the Grants Officer of its decision to use a one-time noncompetitive extension of the final budget period for up to 12 months beyond the ending date of the budget period as shown on the Notice of Award. This one-time extension may not be exercised merely for the purpose of using unobligated balances. Such extension is made without additional funding See 2 CFR § 200.308 (Revision of budget and program plans). Any further no-cost extension requires Grants Officer approval.

D. Supplemental Applications

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

1. Amendments for Administrative Increases to Meet Institution-wide Increased Costs. Applications for supplemental funding may be submitted to an operating unit to cover organization-wide increased costs, such as those costs associated with salary or fringe benefit increases that were not foreseen at the time of the original application. The anticipated cost increases must take effect during the current budget period to be eligible for supplemental funding. These applications are generally not competed when the increased costs are within 25 percent of the last approved budget. If the increased costs are more than 25 percent, the application should be treated in the same manner as an application for new competitive awards, as described in this chapter. If this type of amendment is recommended by the Program Officer and approved by the Grants Officer without competition, the official award file

must contain appropriate justification documentation to explain and justify the decision not to require competition.

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

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

A. Overview

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

B. Review Standards

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

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

- (1) Legislative authority to perform the work with financial assistance;
- (2) Funding availability;
- (3) Complete application package; and
- (4) Scope of work that is consistent with DOC's mission.

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

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

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

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

4. Merit Reviews of Competitive and Noncompetitive Awards.

a. Merit Review of Competitive Awards:

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

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

b. Merit Review for Noncompetitive Awards:

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

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

5. Reviewers of Applications.

a. The Program Office shall select reviewers based on their professional qualifications and expertise. Reviewers of any application may be any mixture of Federal or non-Federal experts, sometimes including individuals from within the cognizant Program Office. Program Offices shall provide opportunity for a diverse group of participants, including those representing underserved communities, to participate in the merit review process, as practicable.

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

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

d. Reviewers must comply with the requirements for the avoidance of conflict of interest discussed in Chapter 15, Section C., of this Manual. In addition, each reviewer must use the application information only for review and treat the application as confidential except to the extent that the information is available to the general public from any source without restriction as to its use. Further, each reviewer must agree to comply with any notice or restriction placed on the application. Upon completion of the review, the reviewer shall return to DOC or destroy all copies of the application and accompanying proposals (or abstracts, if any). Unless authorized by DOC, the reviewer shall not contact the applicant concerning any aspect of the application. Non-Federal reviewers must complete the *Reviewer Conflict of Interest and Confidentiality Certification for Peer Reviewers* certification. If an equivalent certification is used, FALD should review it for completeness before it is used.

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

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

a. Field Readers/Mail Review. A merit review may be administered by using field readers to whom applications are sent for review and comment. Field readers may be used to assist review committees when, for example, the type of expertise needed is not available or there is a high volume of applications.

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

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

C. Evaluation and Selection Requirements for Competition

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

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

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

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

- a. The authorizing legislation and appropriations act (only relevant pages);
- b. The NOFO soliciting applications, and the *Federal Register* Notice (FRN), as applicable;
- c. Any review instructions and checklists and other review documents provided to the independent reviewers;
- d. List of reviewers (which may be coded to protect the identity of the reviewers);
- e. List by rank order of the results of the merit review of all LOIs or pre-applications (if the LOIs and pre-applications were mandatory and a basis of precluding applicants from submitting full proposals), including the review of the LOIs and pre-applications by the independent reviewers, reviewers' scores, and the ranked scores of each application;
- f. List of all applications/proposals rejected and the reason(s) for rejection;
- g. List by rank order of the results of the merit review of applications (including the review of pre-applications, if such a review will result in one or more applicants being prohibited from submitting full applications and thereby not being able to compete further for an award) by the independent reviewers, to include reviewers' scores and the ranked scores of each application;
- h. Copies of completed reviewer's score or evaluation sheets;
- i. List of applications selected and recommended for funding by the Selecting Official and the reason as allowed by the published criteria for selection, including justification for funding application if out of rank order;
- i. A copy of FALD's guidance or comments, if any, and the Program Officer's response; and
- j. Identification of the Selecting Official.

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

- a. Authorizing legislation and appropriations act (only relevant pages);
- b. The NOFO soliciting applications, and the *Federal Register* Notice (FRN), as applicable;
- c. Any review instructions and checklists and/or other review documents provided to the reviewers;
- d. List of reviewers (may be coded to protect the identity of the reviewers);
- e. Evaluation of the application and basis for selection;
- f. FALD's guidance or comments, if any, and the Program Officer's response; and
- g. Identification of the Selecting Official.

D. Review Process for Applications for Competitive Awards

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

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

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

4. OGC Review. The OGC will review grant applications and supporting documents for proposed awards where Federal funding exceeds the Simplified Acquisition Threshold (unless a waiver has been granted under the provisions of Chapter 4.C.3 of this Manual). The OGC will advise the Grants Officer on

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

E. Review Process for Applications for Institutional Awards

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

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

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

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

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

1. **Program Office Review.**

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

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

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

(a) The applicant organization has proprietary information necessary for the conduct of the work.

- The Program Officer must describe the applicant's proprietary information and why no others could possibly possess the information.
- The Program Officer provides this noncompetitive justification documentation. An applicant's claim is not sufficient justification.
- The Program Officer must state in writing that, based on his or her own expertise or the expertise of others he or she has consulted, the applicant has proprietary information necessary for the conduct of the work.

(b) The applicant organization has made a substantial investment in the activity.

- the Program Officer must describe the nature and amount of the substantial investment.
- The applicant's receipt of previous Federal awards for the activity does not constitute a substantial investment. The applicant's own resources must be involved.

(c) The applicant organization is proposing a project that involves a unique idea, method, or approach. The Program Officer must describe what makes the idea/method/approach unique.

(d) The applicant organization is the only organization known to possess the capability to perform the work. The program officer must describe how it was determined the organization is the only one who possesses the capability to perform the work. The justification could be based on:

- the specific situation involving the project (for example, the recipient needs to be a university that awards doctoral degrees, and the identified recipient is the only one in the targeted geographic area which does that), or
- the Program Officer's efforts to determine if other organizations can do the work (for example, by contacting other potential recipients to determine if they have the capability or interest in carrying out the proposed project).

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

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

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

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

example of a situation that might support a public interest determination is the implementation of a pilot project.

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

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

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

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

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

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

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

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

H. Congressional Notification

Once an award with Federal funding is ready to be approved, the Grants Office shall provide information for the Congressional notification to DOC's OLIA using the respective Grants Office's procedures as established with OLIA.

I. Obligation of Funds

The cognizant Grants Officer is the only official authorized to sign awards to obligate funds for DOC for Federal financial assistance. The Grants Officer's decision to obligate funds must be an independent decision, made only after he/she is personally satisfied that it is appropriate to make the award. The Grants Officer's signature on the Notice of Award or on the Amendment constitutes an obligation of Federal funding. Grants Officers must promptly notify Program and Accounting/Finance Offices when funds have been obligated.

J. Notice to Applicants

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

2. Unsuccessful Applicants.

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

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

(2) The Program Office may notify applicants whose applications will not receive merit review at the time of this decision.

(3) The Program Office may notify all unsuccessful applicants that their applications are not being recommended for funding when the Selecting Official has decided which applications to recommend to the Grants Officer for further action.

b. Applications, correspondence, and other records relating to unsuccessful (rejected, withdrawn, or unfunded) applications may be destroyed three years after rejection or withdrawal.

c. Applications not meeting application deadlines or minimum review requirements may be returned to the applicant.

d. The policy concerning disposition of unsuccessful applications should be included in the NOFO.

e. Unsuccessful applicants may request a debriefing, which will provide constructive feedback that can assist in developing improved applications in the future. Briefings should take the form of advice to applicants on the strengths and weaknesses of their own application in terms of the published evaluation and review criteria; however, score sheets, redacted or otherwise, should generally not be released to unsuccessful applicants and bureaus are encouraged to consult with FALD.

9. PRE-AWARD ADMINISTRATIVE REQUIREMENTS

A. Application Package

For discretionary competitive programs, each DOC Program Officer must prepare an application package, which may be in electronic format. Application packages should include all the information that prospective applicants need to apply to a NOFO. The Program Officer should consult the Grants Officer when preparing the application package. The application package must be cleared by the Grants Officer and reviewed by FALD prior to issuance. Application packages must include the following minimum information:

1. Copy of the applicable NOFO prepared in accordance with Chapter 17 of this Manual.
2. Application Forms. Program Officers must use the following OMB standard forms, as applicable, and/or other forms approved by DOC and cleared by OMB for inclusion in the application package. Generally, in the case of paper applications, the applicant is required to submit one original and two copies of these forms. Additional copies of these forms and unique or program-specific forms must be approved by DOC and OMB in accordance with the requirements of 5 CFR Part 1320 (Controlling Paperwork Burdens on the Public).
 - a. Standard Form 424 - Application for Federal Assistance
 - b. Standard Form 424A - Budget Information - Non-Construction Programs
 - c. Standard Form 424B - Assurances - Non-Construction Programs
 - d. Standard Form 424C - Budget Information - Construction Programs
 - e. Standard Form 424D - Assurances - Construction Programs
 - f. Standard Form 424 - Family of Forms for Research and Related Programs
 - g. Standard Form 424 - Short Organizational Family
 - h. Standard Form 424 - Individual Form Family
 - i. Standard Form 424 - Mandatory Family
 - j. Standard Form LLL - Disclosure of Lobbying Activities
 - k. Form CD-511 - Certification Regarding Lobbying
 - l. Form CD-512 - Certification Regarding Lobbying - Lower Tier Covered Transactions
3. Information about Intergovernmental Review of Federal Programs in accordance with the provisions of EO 12372, Intergovernmental Review of Federal Programs. If applicable, the following information shall be provided:

- a. Reference to the current Intergovernmental Review State Single Point of Contact (SPOC) List, including names, addresses, and telephone numbers;
- b. The address to which the SPOCs should send any state process recommendations; and
- c. The specific due date for State process recommendations (formally 60 days after the application deadline date), and a statement that the funding agency does not guarantee to “accommodate or explain” for State process recommendations received after that date.

B. Recommendation for Funding

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

1. Application (Form 424 Series or SF-424 Family of forms, or other authorized forms) with original or electronic dated signature, including complete application with any revisions; a detailed budget narrative; a copy of the current approved negotiated indirect cost agreement (if budget includes indirect costs and the applicant has a negotiated agreement), as applicable; and signed Forms CD-511, and SF-LLL, as applicable.
2. Recommendation memorandum from the Selecting Official, indicating if the award is recommended to be a grant or a cooperative agreement. If the award is recommended to be a cooperative agreement, the package must include a description of the funding agency’s substantial involvement. The Grants Officer will make the final decision concerning the type of funding instrument.
3. Copy of the applicable NOFO or the justification for noncompetitive award as provided in Chapter 8 of this Manual; the original documentation of the review panel’s evaluations; and the Selecting Official’s basis for determination to recommend for funding based on program priorities if not already provided in a summarized package in accordance with Chapter 8 of this Manual. When institutional awards are providing additional funding without competition through either a new award or an amendment, a summary including the date of the most recent report and brief description of the results of the last program review conducted in accordance with provisions of Chapter 15 of this Manual must be included.
4. The Budget Officer’s or other responsible official’s certification of availability of funds.
5. Copy of all pertinent pre-award correspondence with the applicant.

C. Budget Analysis

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

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

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

- a. The allowability and necessity for individual cost categories;
- b. The reasonableness of amounts estimated for necessary costs;
- c. The basis used for allocating indirect or overhead costs; and
- d. The appropriateness of allocating particular overhead costs to the proposed project as direct costs.

3. Projects may be funded in increments as described in Chapter 18, Multi-Year Funding Procedures.

D. Costs

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

If the Grants Officer applies 48 CFR Part 31 to an award to a for-profit organization, then 2 CFR Part 200 Subpart E would not apply.

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

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

b. The non-Federal share, whether in cash or in-kind, is to be paid out at the same general rate as the Federal share. Exceptions to this requirement may be granted by the Grants Officer based on sufficient documentation demonstrating previously determined plans for, or later commitment of, cash or in-kind contributions. In any case, the recipient must meet its cost share commitment over

the life of the award. The recipient must create and maintain sufficient records justifying all non-federal sharing requirements to facilitate questions and audits.

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

2. Direct Costs. Costs that can be identified specifically with a particular final cost objective, such as a Federal award, or other internally or externally funded activity, or that can be directly assigned to such activities relatively easily with a high degree of accuracy. See 2 CFR 200.413 Direct costs. For example, if the budget provides costs only for Personnel, Fringe Benefits, Supplies, Equipment, and Travel, the recipient is not allowed to charge to the award costs for Contracting or Consultants without the prior written approval of the Grants Officer.

3. Federal Employee Expenses. Program Officers and Grants Officers should contact the FALD for guidance should a recipient propose to pay any 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 may prohibit the acceptance of gifts, including travel payments for federal employees, from recipients or applicants regardless of the source.

4. Indirect Cost Rates. At 2 CFR 200.414(c), the Uniform Guidance requires Federal agencies to accept federally negotiated indirect cost rates unless certain exceptions apply. See the most current version of the Financial Assistance Memorandum, 2021-02 (*Department of Commerce Policies, Procedures, and General Decision-Making Criteria for Deviations from Negotiated Indirect Cost Rates under Federal Financial Assistance Programs and Awards* for direction.

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

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

7. Program Income.

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

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

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

d. The disposition of program income shall be in accordance with the terms and conditions of each award. See 2 CFR § 200.307 (Program income).

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

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

F. Applicant's Management and Financial Capabilities

DOC policy is to make awards to applicants and recipients who are competently managed, responsible, capable, and committed to achieving the objectives of the awards they receive. It is essential, therefore, that precautions be taken to award Federal financial assistance only to reliable and capable applicants who can reasonably be expected to comply with award requirements. Therefore, operating units will conduct a review of risk posed by applicants in accordance with 2 CFR § 200.206 (Federal agency review of risk posed by applicants).

G. Review of Recipient's Risk

1. The Grants Officer is charged with determining whether an applicant is sufficiently responsible to receive Federal financial assistance in accordance with the requirements established in 2 CFR §§ 200.206 (Federal agency review of risk posed by applicants) and 200.208 (Specific conditions), as applicable.

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

- a. Not make the award;
- b. Delay the award until conditions are corrected; or
- c. Impose additional specific award conditions as needed, in accordance with 2 CFR § 200.208 (Specific conditions).

3. In any instance where a Grants Officer intends to deny, or a program office fails to recommend, Federal financial assistance to an applicant on the basis of pre-award concerns relating to the applicant's present responsibility, the applicant must be given notice of DOC's determination. In addition, per 2 CFR § 200.213 (Reporting a determination that an applicant is not qualified for a Federal award), the Grants Officer must determine if a report must also be made in the System for Award Management at SAM.gov. Such a determination relates solely to the applicant's present responsibility and the award for which the determination is being made and does not affect the applicant's eligibility for future awards. The notice to the applicant must provide the applicant with an opportunity to submit information showing that DOC's determination is in error or otherwise warrants reconsideration. Once an adverse determination has been made, an award may be made to the next appropriate applicant. Whenever a determination is made which will deny an award based on responsibility concerns, and the denial is part of a long-term plan to disqualify the applicant, DOC's formal debarment and suspension regulations (2 CFR Part 1326) must be followed. These regulations provide procedures for excluding organizations from participating in Federal procurement and nonprocurement activities on a government-wide basis. Failure to follow the appropriate procedures may expose DOC to a valid claim of de facto debarment based on an argument by the applicant that it has been denied due process of law.

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

- a. Require the removal of personnel from association with the management of and/or implementation of the project and require Grants Officer approval of personnel replacements; and
- b. Impose additional specific award conditions as needed, in accordance with 2 CFR § 200.208 (Specific conditions); or
- c. Terminate or suspend the award until corrective action has been taken. Such action should be taken only after the recipient has been afforded adequate due process as noted in section G.3. of this chapter.
- d. Require the recipient to make other changes as appropriate.

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

H. Awards to Insular Areas

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

1. Provide a single set of written program and financial reports for each consolidated award, instead of individual reports for each project activity which has been consolidated;
2. Receive centrally and distribute all requested reports to appropriate program offices;
3. Designate a primary contact with the recipient on all administrative matters related to the consolidated award;
4. Maintain one official award file on the consolidated award; and
5. Review cost sharing requirements in accordance with provisions of section D.1. of this chapter.

I. Preparation of Financial Assistance Award

1. The Uniform Guidance at 2 CFR Part 200 applies to most DOC awards, regardless of the type of recipient. The Uniform Guidance consolidates and supersedes the administrative requirements and cost principles that had been codified prior to 2014 at 15 CFR Parts 14 and 24 (applicable to institutions of higher education, hospitals, other non-profit, and commercial organizations and state and local governments, respectively) and 2 CFR Parts 220, 225, and 230, applicable to educational institutions; state, local, and Indian Tribal governments; and non-profit organizations.

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

As specified below, DOC Grants Officers should apply the below protocol to DOC financial assistance awards to for-profit organizations that budget for indirect costs, unless otherwise determined by the Grants Officer due to the facts and circumstances of a particular award or program. With limited exceptions for those nonprofit organizations listed in Appendix VIII to 2 CFR part 200, only for-profit recipients that are subjected to 48 CFR part 31 may use DCAA/DCMA rates and no adjustments need to be made to these rates.

a. If a for-profit organization is budgeting for indirect costs, but does not have a current DCAA/DCMA rate or a current negotiated indirect cost rate (NICR) from its Cognizant Federal Agency (CFA), the Grants Officer may either:

1. Apply 2 CFR part 200 to the award, including the Cost Principles in Subpart E, and require the organization to obtain a NICR with its CFA (which may be DOC); or
2. Apply 2 CFR part 200 to the award (*see* 2 CFR § 200.101(b)), including the Cost Principles in Subpart E, and allow the for-profit organization to elect the de minimis indirect cost rate pursuant to 2 CFR § 200.414(f); or
3. Apply 48 CFR part 31 to the award and require the organization to secure a DCAA rate.

b. If a for-profit organization is not budgeting for indirect costs, the Grants Officer may, in his/her discretion, apply either 48 CFR Part 31 or 2 CFR Part 200 to the subject award. See 2 CFR § 200.101(b), which allows a DOC Grants Officer to apply Subparts A through E of 2 CFR Part 200 to for profit organizations.

The application of either 2 CFR Part 200 or 48 CFR Part 31 to the award as well as the indirect cost rate (ICR) for the award must be indicated on the Notice of Award (a Specific Award Condition may be used to satisfy this requirement) using the following guidance:

1. By applying 48 CFR Part 31 to the award, the Grants Officer has authorized the for-profit organization to use DCAA/DCMA rates.

2. By applying 2 CFR Part 200 to the award, the Grants Officer is applying 2 CFR Part 200, including the Cost Principles in Subpart E, and the recipient will need to negotiate an ICR with its CFA or use the minimis ICR (pursuant to 2 CFR § 200.414(f)). In this situation, the recipient may not use DCAA rates.

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

2. Award Document. The Notice of Award or Amendment shall be used as the award documents for all Federal financial assistance funded by DOC and must comply with 2 CFR § 200.211 (Information contained in a Federal award). In addition to the information required for a Federal award, the following must be included.

a. Period of Performance.

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

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

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

b. Budget. A budget must be included in every award. It shall be used as the established standard for financial monitoring purposes. Changes made to the budget once the award is issued must be made in accordance with the DOC General Terms and Conditions, applicable regulations, and OMB Circulars. Each budget contains a detailed listing of categories of costs which are allowable under the award. Only those categories of costs which have funding included in the approved

budget are considered allowable costs under a financial assistance award. The recipient cannot add a new budget category to an approved budget without prior written approval from the Grants Officer.

c. **Specific Award Conditions.** In addition to the laws, regulations, 2 CFR Part 200, DOC General Terms and Conditions, and Program-Specific Terms and Conditions controlling the administration of an award, specific award conditions may also be imposed when justified by circumstances. Specific award conditions imposed after the award has been made must be agreed to by both the recipient and the Federal Government unless Federal law or regulation provides the Federal Government with the right to impose specific award conditions under the award in accordance with 2 CFR §§ 200.206 (Federal agency review of risk posed by applicants) and 200.208 (Specific conditions). DOC-wide or program specific award conditions should be used, as applicable, in all DOC Federal financial assistance awards. Other specific award conditions may include the following:

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

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

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

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

(2) In the event the evaluation of risk of the recipient warrants specific award conditions, the Grants Officer will comply with 2 CFR §§ 200.206 (Federal agency review of risk posed by applicants) and 200.208 (Specific conditions), as applicable.

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

d. **General Terms and Conditions.**

(1) The DOC GT&Cs must be incorporated into each award, except EDA construction awards and revolving loan fund (RLF) awards.

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

10. POST AWARD ADMINISTRATION REQUIREMENTS

A. Official Award File

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

1. The original signed application forms, as applicable (SF-424 form family, or OMB approved alternative to these forms). In addition, the official file must include the required DOC forms including, but not limited to, the CD-511 and SF-LLL, when applicable.
2. The original applicant proposal, budget, budget justification, and any amendments to these documents. In addition, the NOFO as it appeared on Grants.gov.
3. Documentation of the analysis upon which the award selection was based including evaluations, scores, justifications, etc. This documentation must clearly demonstrate that the selection procedures have met the requirements contained in Chapter 8 of this Manual.
4. Internal review and clearance documents including all required signatures from the budget office, legal counsel, OIG, grants office, and any other pertinent reviews and/or concurrences determined to be necessary by the Grants Officer or required by DOC or operating unit policy.
5. Certification that all required and applicable pre-award administrative procedures were completed. These procedures include but are not limited to the following:
 - a. Assurance that the recipient was competitively selected by an independent review process or that appropriate noncompetitive review procedures were followed in accordance with Chapter 8 of this Manual and that the official award file contains the required documentation with respect to review and selection procedures;
 - b. Applicants shall comply with all requirements stipulated in 2 CFR § 200.206 (Federal agency review of risk posed by applicants) related to the review of applicant risk requirements;
 - c. Verification that a completed Form CD-511 (Certification Regarding Lobbying) is complete;

- d. The appropriate funding instrument was used in a particular transaction, i.e., grant, cooperative agreement, or contract, in accordance with 2 CFR § 200.201 (Use of grants, cooperative agreements, fixed amount awards, and contracts;
 - e. Assurance that the proposed award was coordinated with any other operating units or Federal agencies, as appropriate.
6. Original fully executed award documents and any amendments with all attachments (except OMB Circulars and applicable uniform guidance requirements, which will be listed on the award document).
7. Memoranda of negotiations with the recipient, if applicable, and correspondence between the recipient and the operating unit in the pre-award and post-award phases.
8. Advance understandings or waivers of generally applicable award requirements.
9. Documentation when delegation of authority is authorized in accordance with Chapter 4 of this Manual. The following is the minimum documentary information which must be a part of the official file when the Grants Officer exercises this delegation of authority:
- a. The specific section of 2 CFR Part 200 (see 2 CFR § 200.102 (Exceptions)) for which a less restrictive requirement is imposed or for which a case-by-case exception is made;
 - b. The reason/justification for approval of the less restrictive requirement or the exception; and
 - c. The specific award condition included in the award to provide the less restrictive requirement or exception.
10. Performance/program, financial, patent, property, and other reports submitted by the recipient and all written evaluation/clearance by the Program Officer or other officials.
11. Property records, including any documentation relating to disposition of property or the filing of security interests. The Tangible Personal Property Report (SF-428) and the Real Property Status Report (SF-429) should be included in documentation, as applicable.
12. Recipient requests for changes requiring amendments, and all correspondence and evaluations of the proposed changes.
13. Site visit reports, as applicable.
14. Project audit reports, including documentation of actions taken, the resolution and implementation of audit findings.
15. Close-out documents including, but not limited to, final financial, progress, property, patent, copyright, and other close-out reports required under the terms and conditions of the award.

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

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

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

B. Costs under DOC Awards

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

If the Grants Officer applies 48 CFR Part 31 to an award to a for-profit organization, then 2 CFR Part 200 Subpart E would not apply.

C. Amendments

DOC awards can only be amended, changed or modified by the cognizant Grants Officer. No other DOC official is authorized to make amendments, changes, or modifications to awards. When the change meets any of the following criteria, the Grants Officer will document said change by issuing an amendment to the award:

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

FALD may need to review proposed competitive financial assistance awards where the amount of Federal funding exceeds the simplified acquisition threshold. *See* Chapter 4.C.3.c. for further guidance.

For no-cost administrative changes not included in the list above, the Grants Officer may elect to issue a letter notifying the recipient of the change and documenting said change in the official award file.

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

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

D. Project Monitoring

The purpose of project monitoring is to ensure that recipients and subrecipients fulfill the terms and conditions of their awards. Project monitoring shall be the joint responsibility of the Grants Officer, Program Officer, award recipient, subrecipient, and/or their designees. Monitoring may include performing site visits, preparing written and/or oral reports, holding meetings, or any other form of communication deemed appropriate by the Grants Officer for keeping apprised of project progress. See 2 CFR § 200.329 (Monitoring and reporting program performance). Grants Officers and Program Officers may request audit assistance from the OIG in fulfilling their monitoring responsibilities. Allegations of fraud, waste, and abuse may also be referred to the OIG or made anonymously through the OIG Hotline at 1-800-424-5197 or <https://www.oig.doc.gov>.

E. Recipient and Subrecipient Responsibilities

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

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

11. ENFORCEMENT

A. Overview

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

B. Enforcement

See 2 CFR § 200.339 (Remedies for noncompliance) through 2 CFR § 200.343 (Effects of suspension and termination). Enforcement actions may include but are not limited to:

- discussions of corrective actions needed,
- written notice delineating needed actions,
- pre-enforcement warnings,
- imposition of risk-based specific award conditions,
- suspension of the award, suspension of payment, or both,
- termination of the award,
- debarment or suspension of the recipient pursuant to 2 CFR Part 1326 and Part 180.

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

2. **Risk-based Specific Award Conditions.** If a recipient or subrecipient fails to comply with the terms and conditions of an award, the Grants Officer may impose specific award conditions pursuant to 2 CFR § 200.208 (Specific conditions). Specific conditions may include placing the recipient or subrecipient on reimbursement only, or other requirements unique to the circumstances. The recipient or subrecipient must be notified in writing of the specific award conditions and informed of corrective actions necessary to remove the specific condition in accordance with 2 CFR § 200.208(d). The level of enforcement action taken should be risk-based and consistent with the nature of the noncompliance.

3. **Suspension of Payments.** The Grants Officer may suspend payments after determining it is necessary to temporarily withhold payments of funds pending the correction of identified deficiencies by the recipient or subrecipient. A suspension of payment may be implemented by suspending the Recipient's access to the Department of Treasury's Automated Standard Application for Payment (ASAP) System when the terms of the award provide for payments to the recipient through ASAP. The imposition of a suspension of payments does not halt activities under an award, and the recipient may continue to incur costs during the suspension of payments. Only the Grants Officer is authorized to

suspend payments under an award or lift the suspension once it is imposed.

The recipient or subrecipient must be notified of the suspension in writing. The notice must be sent by certified mail or electronically, with confirmation of receipt. The notice must state:

- that DOC is imposing suspension of payments,
- the reason(s) why, and
- what corrective action the recipient or subrecipient must take to remedy the situation.

If immediate action is not necessary to protect the government's interest, the Grants Officer should provide the recipient or subrecipient 30 calendar days' notice that DOC will proceed with the suspension of payments if compliance is not established by the recipient or subrecipient within 30 calendar days of the date of the notice. A suspension of payments may be imposed regardless of whether the recipient or subrecipient has submitted pending payment requests. If specified corrective actions are not taken, the Grants Officer may, after considering the best interests of the government, take more severe enforcement action, including suspension or termination of the award.

4. Suspension of Award. The Grants Officer may suspend an award, in part or in its entirety, after determining it is necessary to temporarily halt all activities under an award, including making payments to the recipient and subrecipient, pending corrective actions by the recipient and/or subrecipient. All activities under an award must cease and no costs may be incurred by the recipient or subrecipient during the suspension. Only the Grants Officer is authorized to suspend an award or lift a suspension once it is imposed.

The recipient must be notified of the suspension in writing and a copy of the notification must be included in the official award file. The notice must be sent by certified mail or electronically with confirmation of receipt. The notice must state:

- that DOC is imposing suspension of the award or a portion of the award (if applicable),
- the reasons why, and
- what the recipient can do to remedy the situation.

If immediate action is not necessary to protect the government's interest, the Grants Officer should provide the recipient or subrecipient a minimum of 30 calendar days' notice that DOC will proceed with suspension of the award if compliance is not established by the recipient or subrecipient within 30 calendar days of the notice. Suspension of an award may result in a no-cost extension of the award period to compensate for the work that was not conducted on the project during the suspension.

If specified corrective actions are not taken, the Grants Officer may, take more severe enforcement action, such as termination of the award.

5. Termination for Noncompliance with Award Terms (frequently referred to as termination for cause). After providing FALD an opportunity to review and comment, the Grants Officer may terminate any DOC award, in part or in its entirety for noncompliance, which includes, but is not limited to:

- violation of the terms and conditions of the award;

- failure to perform award activities in a satisfactory manner;
- improper management or use of award funds; or
- fraud, waste, abuse, mismanagement, or criminal activity.

All termination for material noncompliance actions must be documented in the official award file. The recipient or subrecipient must be notified of the termination action in writing using the same minimum requirements listed above in Paragraph 4, if a suspension notifying the recipient or subrecipient of potential termination for noncompliance did not precede the termination action. *See* 2 CFR §§ 200.339 (Remedies for noncompliance) and 200.340 (Termination).

6. Termination by Mutual Agreement or by the Recipient. Per 2 CFR § 200.340(a)(2) and (a)(3), an award may be terminated under the following conditions:

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

b. By the recipient or subrecipient upon sending the Grants Officer a written notification of the reasons for such termination, the effective date, and, in the case of partial termination, the portion of the award to be terminated. However, if the Grants Officer determines in the case of partial termination that the remaining portion of the Federal award will not accomplish the purposes for which the Federal award was made, it may terminate the Federal award in its entirety.

All termination actions must be documented in the official award file. *See* 2 CFR § 200.340 (Termination). The Federal Government may not terminate an award unilaterally for the convenience of the government.

7. Reporting of Termination Actions. The Grants Officer must report material failure award terminations to the OMB-designated integrity and performance system in SAM.gov using the Contractor Performance Assessment Reporting System (CPARS). *See* 2 CFR § 200.340 (Termination), and 2 CFR § 200.341 (Notification of termination requirement).

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

C. Concurrent Actions

Occasionally, when considering an administrative enforcement action, the Grants Officer may discover or be aware that other actions are ongoing or are likely to be initiated against a recipient and/or its officers or employees. Other actions may include OIG audits and/or investigations, and criminal or civil investigations/prosecutions by the Department of Justice. If the Grants Officer is proposing enforcement action requiring FALD review and an opportunity to comment (suspensions and terminations) or requiring FALD clearance (proposed debarments and suspensions under 2 CFR Part 1326 and Part 180), FALD must be informed about the other actions, so that it can assist, if necessary, in the proper coordination with the other authorities. The Grants Officer must inform FALD of any other actions when requesting FALD's review of lesser administrative enforcement actions or of non-enforcement termination (by mutual agreement or by the recipient).

12. AWARD CLOSE-OUT

Award closeout is required for all DOC financial assistance awards. An award expires at midnight local time for the recipient on the date which is listed on the last approved amendment (as the "Extend Period of Performance To" date or on the original award document as the "Period of Performance." General procedures for award closeout are contained in 2 CFR §§ 200.344 (Closeout) and 200.345 (Post-closeout adjustments and continuing responsibilities).

A. Grants Officer Responsibilities

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

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

a. The recipient shall submit all financial, performance, and other reports no later than 120 calendar days after the conclusion of the period of performance as required by 2 CFR § 200.344 (Closeout). The subrecipient is required to submit its final performance report to the pass-through entity within 90 calendar days after the conclusion of the period of performance of the subaward unless an extension has been granted.

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

4. The Grants Officer must make every effort to complete closeout actions no later than one year after the end of the period of performance unless otherwise directed by authorizing statutes. Closeout actions include operating unit actions in the appropriate financial assistance management and payment systems.

If the recipient does not comply with the requirements of this section including submitting all final reports in accordance with 2 CFR § 200.344 (Closeout), the operating unit must report the recipient's material failure to comply with the terms and conditions of the award in SAM.gov. The operating unit must use the Contractor Performance Assessment Reporting System (CPARS) to enter or amend information in SAM.gov. The operating unit may also pursue other enforcement actions as appropriate, see Chapter 11 of this Manual.

B. Unobligated Funds

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

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

C. Deobligation of Funds

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

The 90-calendar day window above does not apply to those awards that remain open due to administrative delays (i.e. for legal issues, to include audit issues or bankruptcy filings as well as delays caused by incomplete final indirect cost rate determinations). Under situations where an award closeout is administratively delayed, reconciliation of the final SF-425 will be completed once all administrative closeout requirements are resolved.

D. Retention of Records

1. General procedures for record retention are contained in 2 CFR § 200.334 (Record retention requirements).
2. In cases where a recipient or subrecipient will no longer be in operation after a financial assistance award has been completed, the operating unit shall require the recipient or subrecipient to:
 - a. Identify where records pertaining to the project will be located for the required three-year retention period; and
 - b. Provide appropriate assurances of government access thereto.

E. Unilateral Termination and/or Administrative Closeout

1. The Grants Officer will effectuate the unilateral termination and/or administrative closeout of:
 - a. expired and unexpired awards pending closeout where the recipient is no longer in existence; and
 - b. expired awards pending closeout where the recipient is in existence, but unresponsive to operating unit notifications and attempts to contact.
2. The unilateral termination and/or administrative closeout applies to recipients which are materially non-compliant with the terms and conditions of the award. In such cases, the Grants Officer should take appropriate enforcement action in accordance with 2 CFR § 200.344 (Closeout), the terms and conditions of the award, Chapter 11 of this Manual, and operating unit policy. Once an active award is terminated, such an award may become subject to this procedure.
3. The unilateral termination and/or administrative closeout procedure does not apply to recipients that are a party to an active bankruptcy case which, in accordance with Chapter 4 of this Manual should be coordinated with the OGC General Litigation Division through FALD. The OGC General

Litigation Division (through FALD) should also be consulted where a recipient is dissolved or reorganized upon an order of the U.S. Bankruptcy Court.

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

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

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

c. Conduct a search of SAM.gov to determine if the recipient has an active registration with current information as well as Do-Not-Pay's death database(s), as appropriate.

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

e. Thoroughly document all efforts to contact the recipient. The Missing Data Report and Due Diligence Checklist (Appendix B of this chapter) may be used as a general template for the report, or an operating unit specific form may be substituted. The Grants Officer will sign the report indicating that the proper due diligence was conducted and that the recipient is no longer in existence.

f. Upon a determination by the Grants Officer that the recipient is no longer in existence, the Grants Officer, using the Sample Unilateral Termination and/or Unilateral Closeout Memorandum (Appendix C of this chapter), or an appropriate operating unit specific memorandum, will document the official award file relative to the unilateral termination and/or administrative closeout of the award, and will further notify the operating unit's Finance/Accounting Officer to deobligate any undisbursed Federal funds relative to the subject financial assistance award. Unexpired awards where the recipient is no longer in existence must be unilaterally terminated by the Grants Officer in a separate action or as part of the action providing for the administrative closeout of the award. Award termination actions must be carried out by the Grants Officer in accordance with 2 CFR § 200.344 (Closeout), Chapter 11 of this Manual (Enforcement), and operating unit policy.

g. The operating unit should investigate the appropriateness of establishing an accounts receivable against the recipient for some or all of the Federal award funds that are not properly accounted for or expended (e.g., a recipient's failure to file SF-425s or to submit A-133 or project-specific audits, as required under the terms and conditions of the subject award). This should be done in accordance with Chapter 14 of this Manual (Establishment and Collection of Financial

Assistance-Related Debts) and in consultation with the operating unit's Finance/Accounting Officer and FALD.

h. The unilateral termination and/or administrative closeout of a financial assistance award generally does not affect any later disallowance or adjustments relative to the award, including but not limited to DOC's right to disallow costs or to recover funds later determined to be due the Federal Government. *See* 2 CFR §§ 200.344 (Closeout) and 200.345 (Post-closeout adjustments and continuing responsibilities).

In accordance with Chapter 4 of this Manual, FALD review of closeout procedure actions is not required, however, the Grants Officer may coordinate with FALD on any matters related to closeout including specific questions or concerns relative to a recipient's organizational status or the adequacy of the operating unit's due diligence efforts.

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

[mm/dd/yyyy]

[Organization Name]

Attn: _____

Recipient Address

Reference: Award Number:

Program Title:

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

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

- * Final Financial Status Report (SF-425)
- * Final and/or Quarterly Progress Report as applicable
- * Equipment Inventory List Authorization/Purchase
- * Final Invention Statement and Certification: As applicable/required
- * Audit(s): As applicable/required
- * Other Agency specific required documents

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

_____ Grants Office

Attn: _____, Grants Management Specialist

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

[INSERT THIS PARAGRAPH FOR ACTIVE AWARDS] In accordance with 2 CFR Part 200.340 (Termination), your organization is hereby notified that [insert grant-making operating unit] intends to unilaterally terminate this award for material noncompliance, unless the information and documentation set forth above is received within 30 days of the date of this letter.]

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

Sincerely,

Grants Officer

Appendix B: Sample Missing Data Report and Due Diligence Checklist

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

Missing Data Report Instructions:

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

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

[Appendix B: Sample Missing Data Report and Due Diligence Checklist \(continued\)](#)

Due Diligence Checklist Instructions:

Complete the checklist below to document the efforts made to contact the recipient.

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

Grants Officer Name: (Type or Print):	Team Lead Name: (Type or Print):
<i>(Signature)</i>	<i>(Signature)</i>

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

Memorandum

Date: [mm/dd/yyyy]

To: [Insert Grants Team Leader's or Grants Officer's Name]

From: [Insert Grants Management Official's Name]

Subject: Unilateral Termination and/or Unilateral Administrative Closeout

Recipient Name:

Award Number:

Period of Performance: [mm/dd/yyyy] through [mm/dd/yyyy]

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

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

Grants Officer

Date

Attachment: Missing Data Report and Due Diligence Checklist

13. AUDITS

A. Audit Requirements

Subpart F to 2 CFR Part 200 (Audit Requirements) is issued pursuant to the Single Audit Act Amendments of 1996 (31 U.S.C. 7501-7507) and sets forth the standards for achieving consistency and uniformity among Federal agencies for the audit of non-Federal entities expending Federal awards. Subpart F also provides the policies and procedures for Federal agencies or pass-through entities when using the results of these audits. To the extent that audits performed in accordance with Subpart F meet DOC needs, DOC shall rely upon and use such audits. In accordance with the DOC GT&Cs, for-profit and other organizations not covered by the audit provisions of Subpart F shall be subject to the audit requirements as stipulated in the award document.

A non-Federal entity subject to Subpart F of 2 CFR Part 200 must, within 90 calendar days of the end of its fiscal year, notify the Grants Officer of the amount of Federal awards, including all DOC and non-DOC awards, the non-Federal entity expended during its fiscal year.

B. Audit Roles and Responsibilities

1. The Senior Procurement Executive and Director of OAM is designated as the DOC's Single Audit Accountable Official (SAAO). The SAAO is responsible for ensuring DOC fulfills the requirements of 2 CFR § 200.513 (Responsibilities) and effectively uses the single audit process to reduce improper payments and improve Federal program outcomes. The complete list of the SAAO responsibilities can be located at 2 CFR § 200.513 (Responsibilities).
2. The Deputy for Procurement Management and the Deputy Senior Procurement Executive is designated as the DOC's Senior Financial Accountable Official (SFAO). The SFAO serves as DOC's Single Audit point of contact and is responsible for authorizing audit report deadline extensions in accordance with 2 CFR § 200.512 (Report Submission).
3. The Director of the FAPOD is designated as the Key Management Single Audit Liaison (KMSAL). The KMSAL serves as DOC's point of contact for the single audit process. The complete list of the KMSAL responsibilities can be located at 2 CFR § 200.513 (Responsibilities).
4. The DOC Office of the Inspector General (OIG) serves as the National Single Audit Coordinator (NSAC) for DOC.

C. Other Audits

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

1. Audits of For-profit, Organizations, Sole Proprietors, and Individuals. A for-profit organization, sole proprietor, or individual receiving a DOC award must have a program-specific or other audit performed where the federal share amount awarded is \$1,000,000 or more, as specified in the award, over the duration of the period of performance. The DOC award may include a line item in the budget for the cost of the audit. The auditor should follow Generally Accepted Government Auditing Standards (GAGAS) and the requirements for a program-specific audit as described in Subpart F of 2 CFR Part 200,

unless there is program-specific audit guidance. A copy of the program-specific audit shall be submitted to the Grants Officer at the address specified in the award document.

2. Audit Conducted by the OIG. The OIG will arrange the audit, whether the audit is performed by their OIG personnel, an independent accountant, or any other Federal, state, or local audit entity.

3. Audit Required by the Award. When an audit is required under a specific award condition, the recipient will usually make the arrangements for the audit. The audit shall be performed in accordance with GAGAS and the requirements for a program-specific audit as described in Subpart F of 2 CFR Part 200, unless a program-specific audit guide is available. The recipient shall submit copies of program-specific audits to the Grants Officer at the address specified in the award document.

D. Access to Recipient Records

An audit of the award may be conducted at any time under the Inspector General Act of 1978, as amended, 5 U.S.C. App. 3, § 1 *et seq.*. The Federal awarding agency or pass-through entity, Inspectors General, Comptroller General of the United States, or any of their authorized representatives, have the right of access to any records of the recipient or subrecipient pertinent to the Federal award, in order to perform audits. The right also includes timely and reasonable access to recipient or subrecipient personnel for the purpose of interview and discussion related to such documents or the Federal award in general. See 2 CFR § 200.337 (Access to records).

E. Audit Resolution

Operating units are responsible for submitting a bi-monthly update of all unresolved audits to OAM/FAPOD by the third Friday of every other month, beginning the month of February of each calendar year.

14. ESTABLISHMENT AND COLLECTION OF FINANCIAL ASSISTANCE-RELATED DEBTS

A. Standards for the Establishment and Collection of Debts

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

1. Debt Collection Act (DCA) of 1982, as amended (31 U.S.C. § 3701 *et seq.*) and the Federal Claims Collection Standards (31 CFR Parts 900-904);
2. DOC debt collection regulations set forth in 15 CFR Part 19 (Commerce Debt Collection);
3. 2 CFR § 200.346 (Collections of amounts due);
4. DAO 213-5 (Audit and Evaluation Resolution and Follow-up);
5. DOC Office of Financial Management's Credit and Debt Management Operating Standards and Procedures Handbook (Debt Management Handbook);
6. OMB Circular A-129 Revised (Policies for Federal Credit Programs and Non-Tax Receivables); and
7. Any other relevant laws, regulations, OMB circulars, and DOC policies, including any DOC operating unit-specific policies and procedures.

B. Establishment of a Debt

1. Debts owed to DOC are often established as a result of a financial assistance audit resolution between DOC and a recipient or subrecipient. The establishment of an audit-related debt must follow the substantive and due process notice requirements set forth in 31 U.S.C. § 3716(a), 15 CFR § 19.4, DAO 213-5, and Chapter 8 of the Debt Management Handbook.
2. Debts owed to DOC may be established for other reasons, such as the disallowance of costs by a Grants Officer, or failure of a recipient or subrecipient to meet cost sharing requirements. In such cases, the Grants Officer will notify the recipient or subrecipient in accordance with 15 CFR § 19.4 and Chapter 8 of the Debt Management Handbook. The Grants Officer will also coordinate the recipient's billing with accounting and other appropriate offices.
3. Both the audit resolution and debt collection processes require that debtors be given written notice concerning the debt and an opportunity to inspect and copy non-privileged records pertaining to the DOC debt. All reasonable efforts should be made to satisfy the requirements in a single process. In particular, the management decision letter should, wherever reasonably possible, also serve as a demand and notice of intent letter as required by the DCA, as amended. *See* 15 CFR § 19.4 for the elements that must be contained in the notice and demand letter; *see also* Debt Management Handbook, Chapter 8. A sample notice and demand letter is set forth in Appendix A of this Chapter.

C. Debt Collection

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

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

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

a. An interest charge on the amount due shall be applied and collected.

- Interest will automatically be waived on any portion of the principal that is paid within 30 calendar days from the date upon which the debt is established.
- If the debt is not paid within 30 calendar days, interest will accrue on the principal, or any portion thereof, owing, and unpaid from the date the debt is established until it is paid in full.
- The minimum annual rate of interest to be charged is the Department of the Treasury's (Treasury) Current Value of Funds. This rate is published annually in the *Federal Register* by Treasury and is available on Treasury's Bureau of the Fiscal Service website. The assessed rate shall remain fixed for the duration of the indebtedness.

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

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

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

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

4. The Grants Officer shall advise the recipient that payment of debts cannot be from:

- Funds received from DOC,
- Funds from other Federal financial assistance awards (including program income generated under such awards), or

- A reduced level of program activity.

5. Section 5 of the Digital Accountability and Transparency (DATA) Act of 2014 amends 31 U.S.C. § 3716(c)(6), Administrative Offset, and requires agencies to refer to Treasury valid, delinquent non-tax debts for the purpose of administrative offset at 120 days. DOC is cross serviced by Treasury for administrative offset. As a result, effective October 1, 2015, all debts delinquent by more than 120 days must be referred to Treasury for cross-servicing, which will allow for referrals to Treasury for administrative offset. See *Debt Management Handbook, Chapter 8, Section 1.0*. DOC debts delinquent for less than 120 days may be transferred for cross-servicing at the election of DOC. The appropriate official must comply with notification requirements contained in 15 CFR Part 19, before debts are transferred to Treasury for action. See also 31 CFR Part 901 (Standards for the Administrative Collections of Claims).

D. Impact of Delinquent Federal Debts on Award Eligibility

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

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

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

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

- a. The delinquent account is paid in full;
- b. A negotiated repayment schedule is established and at least one payment is received; or
- c. Other arrangements satisfactory to DOC are made.

5. Once an outstanding receivable becomes a delinquent Federal debt, no further awards to the recipient may be considered until the debt is paid, except in circumstances cited in subparagraph 4, above, and discussed in subparagraph 6, below. This includes debts that have been written off, but not yet closed out. Although a delinquent debt becomes inactive once it is written off and the operating unit takes no further action to collect it, the debt is still owed to the Federal Government. If, however, the

debt is then closed out by the Finance/Accounting Officer, no further collection action may be taken after the debt is reported to the IRS on Form 1099-G (Certain Government Payments) as income to the debtor.

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

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

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

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

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

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

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

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

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

(3) When a determination is made that:

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

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

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

E. Exceptions

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

Appendix A – Sample Notice and Demand Letter/Management Decision Letter

CERTIFIED MAIL – RETURN RECEIPT REQUESTED [Optional]

[Date]

[Name of Recipient/Debtor]

[Address Line 1]

[Address Line 2]

[Add “Attn:” and Name & Title of General Partner, Corporate President, or State Governmental Official, as appropriate, for Organizational Recipients/Debtors.]

RE: [Name of Recipient/Debtor] (Recipient)

Management Decision (Letter)

Financial Assistance Agreement Number: _____ (Agreement)

Audit Report Number: _____ (Audit Report)

Dear _____:

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

Debt and Demand for Payment

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

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

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

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

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

Collection Actions

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

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

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

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

Inspection and Copying of Documents

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

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

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

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

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

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

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

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

Request for Reconsideration

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

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

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

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

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

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

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

[Other Rights] [Add when applicable.]

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

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

Civil and Criminal Penalties

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

Agency Point of Contact

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

Sincerely,

[Name and Title of Responsible Official]

Enclosures

cc: _____, Principal Assistant IG for Audit and Evaluation

15. GRANTS ADMINISTRATION POLICIES AND REQUIREMENTS

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

A. Anti-Deficiency Act

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

B. *Bona Fide* Needs Rule

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

C. Conflicts of Interest

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

1. Federal Employees

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

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

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

D. Consulting Services

Federal financial assistance awards are not to be used as legal instruments for consultant services for the purpose of performing in-house organizational studies or other studies for internal government use unless allowed by statute.

E. Coordination with DOC and Other Federal Agencies

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

F. DOC Forms

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

1. Form CD-511 - Certifications Regarding Lobbying
2. Form CD-512 - Certification Regarding Lobbying – Lower Tier Covered Transactions

G. Freedom of Information Act (FOIA)

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

H. Management and Institutional Grant Reviews

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

2. Reviews of Institutional Grant Awards. Each financial assistance program that has been authorized by the Grants Officer to make institutional awards must establish procedures in consultation with the Grants Officer for an independent review and evaluation of the program and/or the institutional awards, the performance of the institutional award recipients, and the effectiveness of the program and of the recipients in meeting the objectives and goals of the program. At least once every five years a review must be conducted and the results of the review, including any findings and recommendations, shall be submitted to the Grants Officer in a timely manner, with a copy of the report provided to OAM, as appropriate.

I. Privacy Act

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

J. Recipient Name Change

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

K. Requests for Prior Approval

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

L. Statutory Authority

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

M. Transfer of Award

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

1. When the two organizations, the Program Officer and the Grants Officer agree that it is in the best interests of the Federal Government and the intended beneficiaries of the award to allow the transfer, the Grants Officer will amend the award to transfer it to the new recipient organization. In such cases, the Program Officer must submit a request to the Grants Officer to transfer recipients. The request shall include documentation attesting to the original recipient's and proposed replacement recipient's consent to the proposed transfer. Such documentation should include a written agreement between the original recipient and the proposed replacement recipient executed by authorized representatives of both parties. In this instance, the organization relinquishing the award will be liable for all programmatic activities and all funds expended under the award prior to the effective date of the transfer. The relinquishing organization will be responsible for all closeout activities, including having an audit performed, if required, for the award prior to the effective date of the transfer. The organization to which the award is transferred must submit an application, if appropriate (a maximum of an original and two copies may be required by the Federal awarding agency). If applicable, the following forms

must be submitted:

1. SF-424 – Application for Federal Assistance
2. SF-424A – Budget Information – Non-Construction Programs
3. SF-424B – Assurances – Non-Construction Programs
4. SF-424C – Budget Information – Construction Programs
5. SF-424D – Assurances – Construction Programs
6. CD-511 – Certification Regarding Lobbying
7. SF-LLL – Disclosure of Lobbying Activities
8. any other approved program specific forms.

The Program Officer will review all documents and make a recommendation as to the applicant's adequacy to meet program requirements. This review will be the same as the review of any new application, including a responsibility check on the applicant, unless that function is performed by the Grants Officer. The Program Officer shall provide their review and recommendation to the Grants Officer along with the request. The language in the amendment must clearly delineate the responsibilities of both parties to the transfer. The Grants Officer shall consult with the FALD on the legal merits of the proposed transfer.

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

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

b. The Grants Officer will consult with the FALD on the legal merits of the proposed novation. If the novation is determined to be legally sufficient, the Grants Officer will request that the proposed new recipient submit an application and an amended proposal (if appropriate) to effect the change in award recipient. If applicable, the proposed new recipient shall submit the forms listed in Section M.1 (Transfer of Award) of this Chapter with their application. The Grants Officer will then obtain a review and written recommendation regarding the proposed novation from the Program Officer as to the programmatic efficacy of the proposed agreement. The Program Officer should examine

whether the scope of work has changed or if there are other issues arising that would put the initial competitive selection in jeopardy because of differences between the original and the new recipient and review any related budgetary changes. The Grants Officer must make a responsibility determination regarding the new recipient. If the Grants Officer determines that the award should continue, the Grants Officer shall issue an amendment to the award to effect the transfer to the subsuming organization.

N. Transfer of Funds

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

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

O. Waivers and Deviations

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

16. CONSTRUCTION AWARDS

A. Purpose

This chapter describes the procedures for compliance, reporting, record-keeping, and administrative requirements that generally apply to DOC construction awards. Operating units shall refer to Appendix A (Applicable Regulations, OMB Circulars and Agency-specific Guidance) to this chapter for applicable authorities and for specific operating unit requirements. FALD should be consulted to determine which provisions of this chapter apply.

B. Authority

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

C. Scope of Chapter

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

2. Alterations. Alterations that are incidental to the primary purpose of an award are generally not considered to constitute a construction award under this chapter. For example, if the primary purpose of an award is to allow a recipient to conduct educational or business seminars, the renovation of an educational exhibit or staging area would be considered an alteration and not considered construction.

D. Policy

1. Property that is acquired or improved, in whole or in part, with Federal financial assistance is held in trust by the recipient or subrecipient for the purpose(s) for which the award was made and for the estimated useful life of the project, during which period the DOC operating unit retains an undivided equitable reversionary interest in the property (the Federal Interest). Under the United States Constitution (Article I, Section 8, Clause 1), Congress has the power to appropriate Federal funds. Incident to this power is the right “to further broad policy objectives by conditioning receipt of those Federal moneys upon compliance by the recipient with Federal statutory and administrative directives.” *South Dakota v. Dole*, 483 U.S. 203, 207, quoting *Fullilove v. Klutznick*, 448 U.S. 448, 474 (1980). See also Article IV, Section 3, Clause 2, regarding Congress’ power to make rules regarding property of the United States. The requirement that property purchased or improved with Federal funds continue to be used for the original statutory purpose for which it was acquired is embodied in the Property Standards of the Uniform Guidance at 2 CFR §§ 200.310 (Insurance coverage) -200.316 (Property trust relationship).

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

[A] grantee holds grant funds, and property purchased with those funds, in the capacity of a trustee. For example, in *Joliet-Will*, 847 F.2d at 432 [*In re Joliet-Will County Community Action Agency*, 847 F.2d 430 (7th Cir.1988)], the court held that the grantee was essentially “a trustee, custodian, or

other intermediary, who . . . is merely an agent for the disbursement of funds belonging to another,” and that the grantee's ‘ownership’ was nominal, like that of a trustee. The trust concept finds support in an early Supreme Court decision, *Stearns v. Minnesota*, 179 U.S. 223 (1900), a land grant case in which the Court discussed the grant in trust terms.

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

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

- a. Not to exercise any power of eminent domain available to the recipient (including the commencement of eminent domain proceedings) for use in connection with the project for the purpose of advancing the economic interests of private parties;
- b. Not to accept title to land, easements, or other interest in land acquired by the use of any power of eminent domain for use in connection with the project for such purposes; and
- c. Any use of the power of eminent domain to acquire land, easements or interests in land, whether by the recipient or any other entity that has the power of eminent domain, in connection with the project without prior written consent of the operating unit constitutes an unauthorized activity and/or use of funds under the award, and subjects the recipient to appropriate enforcement action by the Grants Officer, including but not limited to the disallowance of award costs and the termination of an award.

E. General Requirements

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

1. Recipient Responsibilities.

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

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

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

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

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

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

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

2. Operating Unit's Responsibilities.

Operating units shall assist the recipient by providing information and guidance on the Federal requirements for each award, such as the information contained in this chapter, the references and forms listed in the Appendix, and direct guidance and assistance provided by operating unit project managers.

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

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

(2) Construction Terms. For EDA construction awards, the below terms in subparagraphs (2)(a) – (h) or substantively similar terms shall be included in all awards. For construction awards of other DOC operating units, the below terms in subparagraphs (2)(a) – (h) or substantively similar terms

shall also be required, except that the Grants Officer may provide an alternative means of providing public notice of the Federal Interest under subparagraph 2(b) below or, as warranted by the circumstances of a particular award, may forego the filing of a public notice of the Federal Interest but this does not alter the trust relationship by which the recipient holds title (see 2 CFR § 200.316 (Property trust relationship)). Requiring a recipient to provide public notice of the Federal Interest in DOC construction projects is a highly encouraged practice and should be required by the operating unit Grants Officer whenever feasible considering the totality of circumstances surrounding a specific construction project or group of similarly situated construction projects.

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

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

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

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

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

(f) Land, Easements, and Rights of Way. Unless otherwise specified in the terms of the award, before commencement of construction, or when requested by the operating unit, the recipient must furnish evidence, satisfactory in form and substance to the operating unit, that title to real property required for the project is vested in the recipient, and that such easements, rights-of-way, State or local government occupancy or use permits, long-term leases, or other property interests or access rights required for the project have been or will be obtained by the recipient within an acceptable time, as determined by the operating unit. The recipient must disclose all pre-existing or contemplated encumbrances to the operating unit as they pertain to real property that will be acquired or contributed by a recipient or subrecipient pursuant to a DOC construction award. The operating unit will not accept any encumbrance that interferes with the construction, intended use, operation, or maintenance of, or the Federal Interest in, the project during its estimated useful life.

An operating unit may specify a variety of points in time to verify that a recipient provides the necessary evidence of title to project property. For example, the operating unit may require evidence before the operating unit approves award or before the operating unit approves the recipient to advertise for construction bids.

FALD should be consulted to the extent that a Grants Officer or operating unit has questions relative to a recipient's title interest in project property, whether a recipient has secured the requisite licenses, permits or other property interests for a project, or with respect to the nature and impact of any pre-existing or competing encumbrances to project property.

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

(h) Tribal Employment Rights Ordinances. In accordance with DOC policy, all operating units must recognize Tribal Employment Rights Ordinances (TEROs), which may provide for preferences in contracting and employment, in connection with its financial assistance awards. Tribal ordinances requiring preference in contracting, hiring, and firing and the payment of a TERO fee are allowable provisions under Federal awards and should be incorporated by the operating unit under its grants and contracts with American Indian and Alaska Native tribal governments. The payment of the TERO fee, which supports the tribal employment rights office to administer the preferences, should generally be allowable as an expense that is "necessary and reasonable for proper and efficient performance and administration" of an award, as provided under the applicable cost principles set out in 2 CFR Part 200, Subpart E.

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

award.

(1) Recipient Documentation. At a minimum, the recipient's records must fully disclose: (a) all project expenditures, (b) procurement actions, (c) compliance with the Terms and Conditions of the Financial Assistance Award, and (d) contractor compliance with applicable Federal requirements, and (e) such other records as identified in 2 CFR § 200.334 (Record retention requirements), or in the terms and conditions of an award.

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

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

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

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

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

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

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

In addition, between the required reporting dates, events may occur, such as problems, delays, or adverse conditions, that will materially affect the ability of the recipient to attain program objectives, prevent time schedules and goals from being met, or preclude the attainment of project work units by established time periods. The recipient shall be required to inform the operating unit as soon as possible of any event which has or that is expected to have a material impact on the project, including any favorable developments that enable the recipient to meet time schedules and goals sooner than anticipated or produce more work than originally projected. The recipient must notify the operating unit of such events in the most expeditious way possible and then, if the original notification was not in writing, provide the operating unit with written notification, including a statement of the event or issue, a statement of the course of action contemplated to resolve the matter, and any Federal assistance needed to resolve the situation. The operating unit will review and respond appropriately to documentation disclosing these events.

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

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

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

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

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

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

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

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

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

(c) Build America, Buy America. The Build America, Buy America Act (BABA), which was enacted as part of the Infrastructure Investment and Jobs Act (Pub. L. No. 117-58), established a domestic and content procurement preference for all Federal financial assistance obligated for infrastructure projects after May 14, 2022. For infrastructure projects subject to BABA requirements, all iron, steel, manufactured products, and construction materials used in federally funded projects for infrastructure must be produced in the United States. See 2 CFR § 200.322 and 2 CFR Part 184.

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

(5) Architect/Engineer Agreement.

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

(b) The recipient must select the architect/engineer in accordance with the procurement standards set forth in 2 CFR §§ 200.317 (Procurements by States and Indian Tribes) through 200.327 (Contract provisions). The "cost plus a percentage of cost" and "percentage of construction costs" methods of contracting are specifically prohibited. See 2 CFR § 200.324(c).

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

(d) All architect/engineer contracts awarded by the recipient shall include a provision to the effect that the recipient, the operating unit, the Comptroller General of the United States, the Inspector General of the Department of Commerce (OIG), or any of their duly authorized representatives, shall have access to any paper or electronic documents, books, correspondence, and records of the architect/engineer that are pertinent to the award in order to verify the recipient's compliance with award requirements. See also 2 CFR § 200.327, (Contract provisions) for a listing of the required provisions for contracts awarded by recipients pursuant to a DOC financial assistance award (including construction awards).

(6) Early Construction Starts. In order for project costs to be eligible for reimbursement by the operating unit, the operating unit must determine that all contracts necessary for design and construction of the project facilities have been awarded in compliance with the Terms and Conditions of the award. If construction commences prior to the operating unit's determination, the recipient proceeds at its own risk and at the risk of not being reimbursed by DOC for such activities, unless and until the operating unit's review and concurrence.

(7) Requirements during construction.

- (a) At a minimum, during construction, the recipient is responsible for:
 - (i) Ensuring project completion in accordance with approved plans and specifications;
 - (ii) Monitoring project progress and reporting progress to the operating unit;
 - (iii) Providing for required construction permits and adequate construction inspection;
 - (iv) Promptly paying costs incurred for the project purposes, including appropriate bonding costs and insurance premiums;
 - (v) Monitoring contractors' compliance with Federal, State, and local requirements; and
 - (vi) Constructing and maintaining in good condition a sign or signs, at the project site in a conspicuous place indicating that the Federal Government is participating in the project.

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

(9) Change Orders.

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

- (i) The recipient has agreed in writing to fund the additional cost, in which case all work to effect the change order will be an ineligible project cost, and no federal funds will be used to pay for it; *or*
- (ii) There are sufficient funds remaining in the award budget to cover the change order without jeopardizing the completion of the project.

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

(10) Specific Requirements for Contractors and Subcontractors. The recipient is responsible for ensuring that it includes applicable DOC compliance provisions, as contained in the Terms and Conditions of the award, including the contract provisions required by 2 CFR§ 200.327 (Contract provisions), in all contracts let by the recipient under a DOC construction award. The recipient is also responsible for ensuring that, in turn, each contractor under a DOC construction award includes the applicable DOC compliance provisions in all subcontracts awarded under the prime contract. Additionally, the recipient must ensure that each contractor and subcontractor agree to comply with all applicable Federal, state, and local requirements pertaining to the project.

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

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

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

(c) Due to the difficulty in monitoring in-house construction and the possibility of limited operating staff availability for monitoring in-house construction is strongly discouraged. Generally, the in-house method of construction may only be approved if:

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

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

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

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

(12) Contracting Standards.

(a) In General.

(i) States and Indian Tribes. When procuring property and services under a Federal award, a State or Indian Tribe must follow the same policies and procedures it uses for procurements from its non-Federal funds. If such policies and procedures do not exist, States and Indian Tribes must follow the procurement standards in §§ 200.318 through 200.327. In addition to its own policies and

procedures, a State or Indian Tribe must also comply with 2 CFR §§ 200.321 (Contracting with small businesses, minority businesses, women's business enterprises, veteran-owned businesses, and labor surplus area firms), 200.322 (Domestic preferences for procurements). A State must comply with 2 CFR § 200.323 (Procurement of recovered materials) and ensure that every purchase order or other contract includes any clauses required by 2 CFR § 200.327 (Contract provisions). *See* 2 CFR § 200.317 (Procurements by States and Indian Tribes).

(ii) Other Recipients and Subrecipients. All other recipients and subrecipients, including subrecipients of a State, must follow 2 CFR §§200.318 (General procurement standards) through 200.327 (Contract provisions), which are outlined below.

(b) General Procurement Standards. The recipient shall adhere to the procurement standards contained in 2 CFR § 200.318 (General procurement standards). In particular, the recipient shall make awards only to responsible contractors that possess the ability to perform successfully under the terms and conditions of a proposed procurement. In accordance with 2 CFR § 200.318(c), the recipient must maintain written standards of conduct covering conflicts of interest and governing the actions of employees engaged in the selection, award, and administration of contracts. No employee, officer, agent, or board member with a real or apparent conflict of interest may participate in the selection, award, or administration of a contract supported by the Federal award.

A conflict of interest includes when the employee, officer, agent, or board member, any member of their immediate family, their partner, or an organization that employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from an entity considered for a contract. An employee, officer, agent, and board member of the recipient or subrecipient may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors. However, the recipient or subrecipient may set standards for situations where the financial interest is not substantial, or a gift is an unsolicited item of nominal value. The recipient's or subrecipient's standards of conduct must also provide for disciplinary actions to be applied for violations by its employees, officers, agents, or board members. *See* 2 CFR 200 § 200.218(c) for additional information on conflicts of interest.

(c) Competition. All procurement transactions must be conducted in a manner providing full and open competition consistent with the standards of 2 CFR § 200.319 (Competition) and § 200.320 (Procurement methods). The recipient or subrecipient must have written procedures for procurement transactions and recipient or subrecipient must ensure that all prequalified lists of persons, firms, or products used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, the recipient or subrecipient must not preclude potential bidders from qualifying during the solicitation period.

(d) Methods of Procurement. Recipients and subrecipients must adhere to the methods of procurement set forth in 2 CFR § 200.320 (Procurement methods). The recipient and any subrecipient shall maintain records sufficient to detail the history of each procurement transaction related to the project. These records will include but are not necessarily limited to the rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for determining the contract price. *See* 2 CFR § 200.334 (Record retention requirements).

(e) Contracting with Small Businesses, Minority Businesses, Women's Business Enterprises, Veteran-owned businesses, and Labor Surplus Area Firms. As set forth in 2 CFR § 200.321 (Contracting with small businesses, minority businesses, women's business enterprises, veteran-owned businesses, and labor surplus area firms), when possible, the recipient or subrecipient must ensure that small businesses, minority businesses, women's business enterprises, veteran-owned businesses, and labor surplus area firms are used when possible. *See also* the Terms and Conditions of the Award.

(f) Procurement of Recovered Materials. In accordance with 2 CFR § 200.323 (Procurement of recovered materials):

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

(ii) The recipient or subrecipient should, to the greatest extent practicable and consistent with law, purchase, acquire, or use products and services that can be reused, refurbished, or recycled; contain recycled content, are biobased, or are energy and water efficient; and are sustainable. This may include purchasing compostable items and other products and services that reduce the use of single-use plastic products. See Executive Order 14057, section 101, Policy.

(g) Contract Cost and Price. A recipient or subrecipient must adhere to the cost and contract pricing requirements set forth in 2 CFR § 200.324 (Contract cost and price). In particular, a recipient must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold, including contract modifications.

(h) Bonding Requirements. The operating unit or pass-through entity may accept the recipient's or subrecipient's bonding policy and requirements for construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold. Before doing so, the operating unit or pass-through entity must determine that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements set forth in 2 CFR § 200.326 (Bonding requirements) shall apply.

(i) Required Contract Provisions. A recipient, including a State or Indian Tribe, must ensure that contracts and subcontracts awarded pursuant to a DOC financial assistance award contain the applicable provisions described in 2 CFR § 200.327 (Contract provisions) and in Appendix II to Part 200 (Contract Provisions for non-Federal Entity Contracts Under Federal Awards).

(j) Wage rate requirements. For construction projects administered by EDA or as otherwise required by applicable program or appropriation legislation, wage rates paid for labor must not be

less than the prevailing area wages, as determined by the U.S. Secretary of Labor and embodied in the construction contract pursuant to the requirements of the Davis-Bacon Act, as amended (40 U.S.C. § 276a *et seq.*).

(13) Review of Plans and Specifications.

(a) Review Prior to Advertising. When required by the operating unit, the recipient must submit plans, specifications, and certain related documents for review and concurrence prior to advertising for bids. This review is to ensure compliance with the Terms and Conditions of the award and does not attest to the accuracy or completeness of design, dimensions, details, proper selection of materials, or compliance with required codes or ordinances, which responsibility rests with the recipient. *See also* 2 CFR § 200.325(a), which specifies that the recipient or subrecipient must provide technical specifications on proposed procurements where the Federal awarding agency or pass-through entity believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition.

(b) Review Prior to Award. As provided in 2 CFR § 200.325(b), the operating unit may also review proposed contracts and related procurement documents prior to award if:

(i) The recipient's or subrecipient's procurement procedures or operation fails to comply with the procurement standards specified in 2 CFR Part 200;

(ii) The procurement is expected to exceed the simplified acquisition and is to be awarded without competition or only one bid or offer is received in response to a solicitation;

(iii) The procurement is expected to exceed the simplified acquisition threshold and specifies a "brand name" product;

(iv) The procurement is expected to exceed the simplified acquisition threshold and a sealed bid procurement is to be awarded to an entity other than the apparent low bidder; or

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

Until the operating unit has reviewed recipient's proposed contracts and related procurement documents and determined they comply with the Terms and Conditions, the recipient will proceed at its own risk regarding the eligibility of any costs incurred.

(14) Alternate Construction Procurement Methods. If permitted by the terms and conditions of an award, a Recipient may use alternate construction procurement methods to the traditional design/bid/build procedures (including lump sum or unit price-type construction contracts). If an alternate method is used, the recipient shall submit to the operating unit for approval a construction services procurement plan. In this situation, the recipient must secure a design professional to oversee the process.

(15) Protest Procedures. In accordance with 2 CFR § 200.318(k), the recipient or subrecipient is responsible, without recourse to DOC, in accordance with good administrative practice and sound

business judgment, for the settlement and satisfaction of all contractual and administrative issues arising out of a recipient's procurement under a DOC financial assistance award. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the recipient or subrecipient of any contractual responsibilities under its contracts. The Federal awarding agency will not substitute its judgment for that of the non-Federal entity unless the matter is primarily a Federal concern. The recipient or subrecipient must report violations of law to the local, state, or Federal authority with proper jurisdiction.

F. Disbursement of Funds and Financial Administration

Unless the award provides that payments will be made using the Department of Treasury's Automated Standard Application for Payment (ASAP) system or other automated payment system, after the initial disbursement has been made, the recipient may request interim disbursements by submitting Form SF-270 (Request For Advance Or Reimbursement) or Form SF-271 (Outlay Report And Request For Reimbursement For Construction Programs) as required for reimbursing the operating unit's share of eligible project costs. When project construction is complete, the final inspection has been completed, and the recipient has accepted the project from the contractor, the recipient can begin the closeout process by submitting the following documentation for review and approval to the respective operating unit:

1. A request for final disbursement on an executed Form SF-270 or SF-271;
2. A certificate of substantial completion, final acceptance report, or similar documentation; and
3. Other documentation as may be required by the operating unit or other Federal authority.

G. Award Amendments

In most instances, proposed modifications must be accomplished only through a formal amendment to the award. Types of amendments may include:

1. **Time Schedule (No Cost) Extensions.** The recipient is responsible for compliance with the project development time schedule deadlines contained in the Financial Assistance Award. As soon as the recipient becomes aware that it will not be possible to meet the time schedule, it immediately should contact the operating unit to request a time extension. A time extension (no cost) must ordinarily be submitted to the Federal project officer at least 30 days prior to the end date of the award. A budget of the remaining funds should be included in the time extension request. The operating unit may inform the recipient that grant disbursements cannot be made while the recipient is not in compliance with the time schedule. The recipient's notice to the operating unit should contain the following information (as applicable to the subject award):

- a. An explanation of the recipient's inability to complete work by the specified date (e.g., a lengthy period of unusual weather delayed the contractor's ability to excavate the site; major re-engineering required in order to obtain Federal or state approvals; unplanned environmental mitigation required).
- b. A statement that no other changes to the project are contemplated;

- c. A budget for the remaining funds;
- d. A statement, supported by documentation where appropriate, demonstrating there is still a bona fide need for the project; and
- e. A statement that no further delay is reasonably anticipated and that the project can be completed within the revised time schedule.

2. Budget Revisions and Changes to Program Plans. The recipient shall notify the operating unit and request prior approval of any proposed deviations from budget and program plans in accordance with 2 CFR § 200.308 (Revision of budgets and program plans) and the Terms and Conditions of the Award.

3. Additional Funding. In accepting an award from an operating unit, the recipient normally agrees to fund any overrun(s). Additional funding for an approved project is subject to prior approval from the Grants Officer. To be considered for approval, additional funding requests must compete with other applications for program funding. If an overrun occurs as a result of the construction contract bid opening, before the operating unit will accept a formal request for additional funds, it will be necessary for the recipient to furnish the following documentation to the operating unit:

- a. A written statement from the recipient's architect/engineer giving reasons for the architect/engineer's professional opinion that redesign of the project within the approved scope or using new or additional deductive alternates cannot reasonably be expected to reduce the cost to within the available funds; and
- b. A written statement from the administrative head of the recipient's organization justifying why the recipient cannot furnish the additional funds required, why non-Federal sources of funds cannot be secured, and, for EDA projects, certifying that the recipient's effective taxing and/or borrowing capacity have or has been exhausted.

The operating unit's acceptance of a request for additional funding does not indicate approval. Any further action by the recipient pending the operating unit's review of the request is at the recipient's risk and at the risk of not being reimbursed by DOC, unless and until the request is approved by the Grants Officer.

4. Enforcement and Termination.

a. Enforcement.

(1) If a recipient materially fails to comply with any Term or Condition of the award, whether stated in a Federal statute, regulation, assurance, application for Federal financial assistance, or notice of award, the operating unit may pursue all available rights and remedies available to it, including those set out in 2 CFR § 200.339 (Remedies for noncompliance).

(2) Costs resulting from obligations incurred by the recipient after notice by the operating unit of suspension or termination of the award are not allowable unless the operating unit expressly authorizes them in the notice of suspension or intent to terminate, or subsequently. Other costs

incurred by the recipient during suspension or after termination that are necessary and not reasonably avoidable are allowable if:

(a) The costs result from obligations that were properly incurred by the recipient before the effective date of the suspension or termination, are not in anticipation of it, and in the case of termination, are non-cancellable; and

(b) The costs would be allowable if the award was not suspended or expired normally at the end of the budget period in which the termination takes effect.

(3) The remedies for noncompliance identified in 2 CFR § 200.339 (Remedies for noncompliance), including suspension and termination, do not preclude the recipient from being subject to debarment and suspension under Executive Orders 12549 and 12689 and the DOC's implementing regulations at 2 CFR Part 1326 (Non-Procurement Debarment and Suspension).

b. Termination.

(1) Terminations for a non-federal entity's material failure to comply with the terms of the award must be in accordance with 2 CFR §§ 200.340 (Termination), 200.341(b) and (c), and 200.342 (Opportunities to object, hearings, and appeals), as applicable.

(2) Terminations with the consent of the non-Federal entity (also known as terminations by mutual agreement) must comply with 2 CFR § 200.340 (Termination).

(3) Termination to the greatest extent authorized by law if an award no longer effectuates the program goals or agency priorities (2 CFR § 200.340 (a)(2)).

H. Post-Construction Requirements

1. Audit Requirements.

a. Certain recipients are subject to the audit requirements contained in Subpart F of 2 CFR Part 200 (Audit Requirements) – referred to in this Manual as the Single Audit Requirements. The Single Audit Requirements are issued pursuant to the Single Audit Act of 1984 (Pub. L. No. 98-502), as amended by the Single Audit Act Amendments of 1996 (Pub. L. No. 104-156; 31 U.S.C. §§ 7501-7507) and require that recipients that are nonprofit organizations, government agencies, Indian tribes, and educational institutions expending Federal awards of \$1,000,000 or more during the recipient's fiscal year conduct an audit in accordance with the requirements of Subpart F of 2 CFR Part 200. If the recipient does not have a current audit performed in accordance with the Single Audit Requirements, the operating unit shall advise the recipient of the need for submitting the required audit and may also take appropriate enforcement action in accordance with 2 CFR § 200.339 (Remedies for noncompliance).

b. For profit and other organizations not subject to the Single Audit Requirements shall be subject to the audit requirements set forth in the DOC GT&Cs issued with the award, unless a different audit requirement is imposed through specific award condition(s).

c. The operating unit or the OIG may conduct audits of awards. The recipient will be notified in advance if it is selected for an audit. The recipient must permit the operating unit, the Comptroller General of the United States, the OIG, or any of their duly authorized representatives, access to any paper or electronic documents, books, correspondence, and any records (that are pertinent to a specific award to verify the recipient's compliance with the Terms and Conditions of an award. *See* 2 CFR § 200.337 (Access to records).

2. Property Management.

a. Section E of this chapter provides that all DOC construction awards include a term requiring that the recipient to agree that, for the estimated useful life of the facility funded with the award, the project will be properly and efficiently administered, operated and maintained, for the purpose authorized by the award and in accordance with the Terms and Conditions of the award.

b. Estimated Useful Life. Unless the operating unit determines otherwise, the following ranges of estimated useful lives are considered reasonable for the listed assets:

- (1) New buildings, 20 – 40 years.
- (2) Rehabilitation or outfitting of existing buildings, 15 – 20 years.
- (3) Improvements other than buildings, 15 – 20 years.

The estimated useful life should be determined from the date of acquisition, date of certificate of occupancy for building or improvement, filing of the notice of federal interest, or other appropriate date as provided in the terms and conditions of an award FALD should be consulted to the extent that a Grants Officer or operating unit has questions concerning the date upon which the estimated useful life in a specific project or asset should commence.

c. Notice of Federal Interest. Section E of this chapter provides that certain DOC construction awards include a term requiring the recipient to file or record a covenant, mortgage, or other statement of the operating unit's interest in the property (the "Federal Interest"), acceptable in form and substance to the operating unit, that must be placed of record in accordance with local law, with continuances re-filed as appropriate (for fixture filings). The Federal Interest notice provides public notice of that interest and helps to ensure compliance with matters such as the purpose, scope, and use of a project; it should be reflected by a recorded notice in appropriate form and substance (e.g., a mortgage, covenant, or other statement) setting forth the operating unit's interest in real property or other improvements in the case of a project involving the acquisition, construction, or improvement of real property and/or buildings, signed by an authorized official of the recipient. It should specify the estimated useful life of the property and should include but not be limited to the use requirements applicable to the property and the procedure for disposition of the property when it is no longer needed for the originally-authorized purpose. The notice of the DOC operating unit's interest must be recorded or filed in the real property records of the jurisdiction in which the real property is located, in accordance with applicable law. In view of the complexities and varying requirements for perfecting interests in real property from jurisdiction to jurisdiction, DOC requires a written statement from a licensed attorney in the jurisdiction where the

property is located, certifying that the Federal Interest has been protected as required under the award and in accordance with this general policy. A copy of the recorded lien, statement, or other recordable instrument must be attached to the attorney's certification.

When the recipient's executed certification and attached documentation is received by the operating unit, the operating may want to consider consulting with other legal counsel within DOC (for example, FALD or EDA's Office of Chief Counsel) who have experience in dealing with real property construction grants, for assurance that the certification and attached documentation reasonably appear to adequately protect the Federal Interest.

d. Type of Federal Interest. Operating units should consider the nature of the recipient and the asset and the potential risk of loss to the government when determining the type of instrument that the recipient should be required to execute and record reflecting the Federal Interest therein. State or local law may prescribe the form, means and location of filing or recording an appropriate notice. Operating units are encouraged to consult with FALD counsel concerning the form and content of recipient documentation and public filings.

3. Closeout Procedures.

a. After construction is complete and the project is closed out financially, the recipient has an ongoing responsibility to properly operate and maintain the project for its estimated useful life in accordance with its original purpose. The recipient also must comply with all applicable requirements including but not limited to ongoing compliance with Federal statutes, regulations, and Executive Orders prohibiting discrimination; applicable Federal laws prohibiting inherently religious activity; applicable environmental law and performance measures; and maintaining records to document such compliance which shall be made available for inspection by the operating unit or other government officials as required. When project construction and final inspection have been completed, and the recipient has accepted the project from the contractor, the recipient may begin the closeout process in accordance with 2 CFR § 200.344 (Closeout) and the Terms and Conditions of the Award. The recipient should furnish the following to the operating unit:

(1) Confirmation of compliance with all Terms and Conditions of the Award, including all specific award conditions;

(2) All required financial and progress reports;

(3) A properly completed Form SF-429, including applicable attachments and supporting documentation;

(4) Confirmation of appropriate insurance coverage for aboveground facilities in accordance with 2 CFR § 200.310 (Insurance coverage) and the Terms and Conditions of the Award;

(5) Confirmation that all changes to the project have been brought to the attention of the operating unit and approved as necessary by the Grants Officer;

(6) Confirmation that provisions have been made for the retention of records pertaining to the award in accordance with the 2 CFR § 200.334 (Record retention requirements) and the Terms and Conditions of the Award;

(7) A copy of the executed Certificate of Final Completion, Certificate of Occupancy, or similar documentation;

(8) Confirmation that as-built drawings have been received from the contractor or the architect/engineer;

(9) Confirmation that a copy of the recipient's currently valid audit under the Single Audit Requirements has been submitted to the Federal Audit Clearinghouse and, if required, furnished to the operating unit. If an audit under the Single Audit Requirements is required, but not available, the recipient must submit a plan to secure the required audit to the operating unit. The recipient must advise the operating unit if an audit under the Single Audit Requirements is not required. If the recipient is not subject to the Single Audit Requirements, the operating unit must confirm the recipient has submitted all required project-specific audits;

(10) Confirmation that no Davis-Bacon (if applicable) or local labor employment violations exist;

(11) Notification of any change, lien, mortgage, or other encumbrance relating to the ownership of the project;

(12) Notification of any unresolved contract/contractor disputes;

(13) Execution and recordation of a lien, mortgage, or covenant of purpose, use, and ownership in favor of the operating unit, if this is required under the Terms and Conditions of the award and has not already been accomplished; and

(14) Confirmation that the recipient will maintain project facilities for the estimated useful life of the facility as determined by the operating unit, during which period the recipient may not alienate its ownership or change the use and purpose of the assisted facility without prior written approval of the Grants Officer;

b. Within 120 calendar days of project completion (which may be extended by the Grants Officer upon written request by the recipient), the recipient shall submit all financial, performance, and other reports as required by 2 CFR § 200.344 (Closeout) and by the Terms and Conditions of the Award. The subrecipient is required to submit its final performance report to the pass-through entity within 90 calendar days unless an extension has been granted.

c. Unless the operating unit authorizes an extension, the recipient shall liquidate all obligations incurred under the award no later than 120 calendar days after the acceptance of the project from the contractor or before the end of the budget period, whichever occurs earlier, as specified in 2 CFR § 200.344 (Closeout) and in the Terms and Conditions of the Award.

d. At the Grants Officer discretion, the following documentation should accompany the recipient's final disbursement request when submitted to the operating unit, unless such documentation has been previously furnished, as applicable:

(1) Copies of all executed contracts, subcontracts (if claimed separate from the prime contract), contract change orders, vouchers, canceled checks, and other evidence of costs incurred necessary to substantiate the costs claimed on the operating unit award;

(2) A copy of the recipient's currently valid audit performed in accordance with the Single Audit Requirements, if such an audit is required, and if the operating unit requires submission of the audit;

(3) Payroll forms, if any of the cost claimed is for work performed by the recipient's in-house work forces ("force account");

(4) Title opinions, legal descriptions, bills of sale, title records, etc., for any land cost being claimed; and

(5) Specifics of any administrative costs being claimed.

e. In accordance with 2 CFR § 200.345 (Post-closeout adjustments and continuing responsibilities), the closeout of an award does not affect any of the following:

(1) The right of the operating unit to disallow costs and recover funds on the basis of a later audit or other project review;

(2) The obligation of the recipient to return any funds due as a result of later corrections or other transactions;

(3) Property management, property disposition, and records retention requirements; and

(4) Audit requirements set forth in 2 CFR Part 200, Subpart F, and in the Terms and Conditions of the Award.

Appendix A: Applicable Regulations, OMB Circulars and Agency-specific Guidance

The following regulations, OMB Circulars, and forms are available from public libraries and may also be accessed at the following internet websites:

- OMB (www.whitehouse.gov/omb/), or
- The Government Printing Office Access site of the National Archives and Records Administration (www.gpoaccess.gov/cfr/index.html).

See also DOC GT&Cs and Chapter 2 of this manual for discussion of additional requirements, including, but not limited to:

- National Environmental Policy Act of 1969, as amended (Pub. L. No. 91-190; 42 U.S.C. § 4321 et seq., as implemented under 40 CFR Chapter V) (NEPA);
- Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000d et seq.) and the DOC's implementing regulations at 15 CFR Part 8;
- 42 U.S.C. § 3123 and 42 U.S.C. § 6709 (for EDA recipients), and the DOC's implementing regulations at 15 CFR §§ 8.7-8.15;
- Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794) and the DOC's implementing regulations at 15 CFR Part 8b;
- The Age Discrimination Act of 1975, as amended (42 U.S.C. § 6101 et seq.) and the DOC's implementing regulations at 15 CFR Part 20;
- The Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.) prohibiting discrimination on the basis of disability under programs, activities, and services provided or made available by State and local governments or instrumentalities or agencies thereto, as well as public or private entities that provide public transportation;
- 2 CFR Part 1326 (Non-Procurement Debarment and Suspension);
- 15 CFR Part 11 (Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs);
- 2 CFR Part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, including the "Property Standards" set forth in 2 CFR §§ 200.310 (Insurance coverage) – 200.316 (Property trust relationship));
- 36 CFR Part 800 (Protection of Historic Properties);
- 48 CFR Part 31 (Contract Cost Principles and Procedures);
- OMB Standard Form 424C (Budget Information – Construction Programs);
- OMB Standard Form 424D (Assurances – Construction Programs) which references laws and regulations that may apply to particular awards;
- OMB Standard Form SF 428 (Tangible Personal Property Report) including Attachments A through C;
- OMB Standard Form SF 429 (Real Property Status Report) including Attachments A through C; and
- Davis Bacon Wage Rates, available at <http://www.wdol.gov/>.

1. The following is available from EDA:
 - Public Works and Economic Development Act of 1965, as amended (42 U.S.C. § 3121 et seq.) (PWEDA)
 - EDA regulations set forth at 13 CFR Parts 300 through 315
 - EDA Standard Terms and Conditions for Construction Projects
 - The Summary of EDA Construction Standards (with Exhibits)
 - For the most current and up-to-date versions of the following Exhibits, contact EDA's –
Office of the Chief Counsel
HCHB, Room 72023
(202) 482-4687
jroberson@eda.gov, or rgamble@eda.gov:
 - (a) Exhibit A – Sample Mortgage Cover Letter
 - (b) Exhibit B – Sample Mortgage
 - (c) Exhibit C – Sample Covenant Cover Letter
 - (d) Exhibit D – Sample Covenant
2. The following are available from NOAA:
 - NOAA (Construction) Grants Policy Directive
 - NOAA Grants Standard Operating Procedures – Construction Grants
3. The following are available from NIST:
 - NIST Standard Terms and Conditions for Extramural Construction Projects

17. GUIDELINES FOR THE PREPARATION OF PUBLIC NOTICES ANNOUNCING THE AVAILABILITY OF FINANCIAL ASSISTANCE: NOTICE OF FUNDING OPPORTUNITY (NOFO) AND *FEDERAL REGISTER* NOTICES

A. Background

1. 2 CFR § 200.204 (Notices of funding opportunities) and Appendix I to 2 CFR Part 200 (Full text of notice of funding opportunity) contain the current requirements for NOFOs.

2. It is the policy of DOC that:

a. All NOFOs will conform to the formats set forth in the 2 CFR § 200.204 and Appendix I to 2 CFR §200.

b. All NOFOs are required to be cleared in accordance with established internal clearance procedures as well as applicable external clearance procedures (i.e. OMB clearance as required).

c. All NOFOs will be posted on the OMB-designated governmentwide website for finding and applying for Federal financial assistance; the current website is <http://www.grants.gov/>.

d. All amendments to NOFOs must undergo the same clearance protocol as the original NOFO.

Any changes to a competition's substantive application requirements, including but not limited to eligibility requirements, required forms, change of dates, and the evaluation criteria, requires an amendment to the NOFO. Operating units may not change information concerning a competition's substantive application requirements in a Frequently Asked Question (FAQ) document without also amending the NOFO.

Questions pertaining to whether a NOFO amendment is required should be addressed to the Grants Officer responsible for the subject financial assistance program in consultation with the FALD.

e. Publication of Supplementary Materials. Operating units often produce webinars, FAQ documents, and other supplementary materials to provide additional guidance to potential financial assistance applicants, during the time a NOFO is open for applications. Supplementary materials, including FAQs or other informal clarifications external to the NOFO itself, should not be published while the competition is in process without first consulting the Grants Officer and FALD. This applies to any materials related to the competition the operating unit decides to make public via webinars, program web pages, printed handouts, or any other vehicle.

f. Further, for any supplementary materials published while a NOFO is open to applications, the operating unit must:

- (1) Require that the supplementary materials be accompanied by a disclaimer stating that the NOFO is the official competition document – nothing in the supplementary materials are intended to conflict with or supersede the NOFO in any way; and

- (2) Resolve any perceived conflicts by reference to the NOFO.

B. Format of NOFO

1. The NOFO has two parts. The first part provides summary information (see 2 CFR § 200.204, Notices of funding opportunities) and the second part includes the full text of the announcement (see Appendix I to 2 CFR Part 200). All DOC NOFOs shall adhere to the requirements outlined in 2 CFR 200.204 (Notices of funding opportunities) and Appendix I to 2 CFR Part 200. In addition, DOC NOFOs must include the following:

- a. Funding Restrictions. The applicant must be advised that it is DOC policy that DOC funds may not be used to pay for management fees in excess of costs or profits, unless statutorily authorized. Per Chapter 9 of this Manual, requests for fee or profit by recipients of any type should be referred to FALD for review.

- b. Other Information the operating unit finds necessary. This section must include the following two items:

- (1) Alert applicants to the need to identify proprietary information and inform them about the way the operating unit will handle it. The following language shall be included in all NOFOs:

The applicant acknowledges and understands that information and data contained in applications for financial assistance, as well as information and data contained in financial, performance and other reports submitted by applicants, may be used by the Department of Commerce in conducting reviews and evaluations of its financial assistance programs. For this purpose, applicant information and data may be accessed, reviewed and evaluated by Department of Commerce employees, other Federal employees, and also by Federal agents and contractors, and/or by non-Federal personnel, all of whom enter into appropriate conflict of interest and confidentiality agreements covering the use of such information. As may be provided in the terms and conditions of a specific financial assistance award, applicants are expected to support program reviews and evaluations by submitting required financial and performance information and data in an accurate and timely manner, and by cooperating with Department of Commerce and external program evaluators. In accordance with 2 CFR § 200.303(e), applicants are reminded that they must take reasonable measures to safeguard protected personally identifiable information and other confidential or sensitive personal or business information created or obtained in connection with a Department of Commerce financial assistance award.

In addition, Department of Commerce regulations implementing the Freedom of Information Act (FOIA), 5 U.S.C. Sec. 552, are found at 15 CFR Part 4, Disclosure of Government Information. These regulations set forth rules for the Department regarding making requested materials, information, and records publicly available under the FOIA. Applications submitted in response to this Notice of Funding Opportunity may be subject to requests for release under the Act. In the event that an application contains information or data that the applicant deems to be confidential commercial information that should be exempt from disclosure under FOIA, that information should be identified, bracketed, and marked as Privileged, Confidential, Commercial

or Financial Information. In accordance with 15 CFR § 4.9, the Department of Commerce will protect from disclosure confidential business information contained in financial assistance applications and other documentation provided by applicants to the extent permitted by law.

(2) Include certain routine notices to applicants (e.g., that the Government is not obligated to make any award as a result of the announcement or that only a Grants Officer can bind the Government to the expenditure of funds).

C. Publication in the *Federal Register*

Grants.gov is the current OMB-designated governmentwide website for posting, finding and applying for Federal financial assistance. Operating units are no longer required to publish NOFOs in the Federal Register unless required by statute or regulation. Operating units may want to seek legal counsel from AGC/L&R or FALD regarding the decision not to publish a notice in the Federal Register. Should an operating unit determine that it will also publish a notice in the Federal Register, DOC policy is that the operating unit will publish only the minimum information legally required under the Administrative Procedure Act (5 U.S.C. §§ 551-559), which includes the following information contained in the notice of funding opportunity:

1. Summary description of the program;
2. Deadline dates;
3. Addresses for submission of applications;
4. Information contacts (including electronic access);
5. Amount of funding available;
6. Statutory authority;
7. Assistance Listings number;
8. Eligibility requirements, including any cost sharing requirements;
9. Intergovernmental Review requirements;
10. Evaluation criteria used by the merit reviewers;
11. Selection procedures, including funding priorities/selection factors/policy factors to be applied by the selecting official; and
12. Administrative and National Policy Requirements. See paragraph D.2.g.(9), below, for specific language.

To the extent any of the above have been codified or otherwise published in the *Federal Register* a cross reference to the appropriate CFR or *Federal Register* publication may be substituted.

D. *Federal Register* Format Requirements

Federal Register notices must be drafted in accordance with the guidelines delineated in Chapter 4 of the *Federal Register* Document Drafting Handbook, which includes the submission requirements. In accordance with the handbook, notices must be organized as follows:

1. **Heading.** The headings must identify the billing code, issuing agency, the CFR title, docket number, regulation identification number (RIN) (if applicable) and subject matter of the document and must be presented in the following format:

- a. Agency is always the Department of Commerce.
- b. Subagency (if necessary) identifies the operating unit which is issuing the notice.
- c. Docket number.
- d. RIN (if applicable).
- e. Subject heading describes the content of the notice in a concise statement.

The following is an example of how the headings must appear in the notice:

DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
[Docket No. _____]
RIN _____
Financial Assistance for Oyster Disease Research

2. **Preamble.** The preamble is the main focus of the notice and shall follow the Subject Heading. It arranges the content of the document into a uniform format by providing information on “who, what, where, when, and why.” This allows the reader to review the document and assess its main points, determine whether it is of interest, and decide whether to respond to the notice. The preamble should be organized in the following format with the captions typed in all capital letters:

- a. **AGENCY.** Identifies the operating unit issuing the document. The caption usually repeats the name of the operating unit as carried in the document's headings. When a subagency and operating unit name appear together, the subagency name is carried first and the agency name is represented by its commonly used acronym or other shortened expression (for example, Economic Development Administration, DOC). This caption may, in addition, identify a smaller organizational unit within the operating unit (for example, National Marine Fisheries Service, NOAA).
- b. **ACTION.** Identifies the document category. This section must not be used to summarize the document. In this instance, the document category is a “Notice.”
- c. **SUMMARY.** Briefly describes in plain English what action is being taken, why the action is necessary, and the intended effect of the action. Any extensive discussion or details belongs under the SUPPLEMENTARY INFORMATION section.

d. **DATES.** Contains any pertinent dates that the reader may need to know such as the closing dates for submission of preapplications (if applicable) and applications, anticipated number of days required to process applications, and date when awards are expected to be made. To provide the public reasonable notice and an opportunity to apply, the Federal awarding agency must generally make all funding opportunities available for application for at least 60 calendar days. *See* 2 CFR § 200.204 (Notices of funding opportunities).

Because the publication date of the notice will not be known until it is submitted to the Office of Federal Register, inserting specific calendar dates is discouraged; rather, allow the Office of Federal Register to calculate the dates by including the following where dates must appear in the notice: {Insert (number of days, but no less than 60) after the date of publication in the *Federal Register*}.

e. **ADDRESSES.** Contains pertinent address(es) for the reader such as where to write to obtain an application package, where to send an application, or where to send correspondence for any other purpose.

f. **FOR FURTHER INFORMATION CONTACT.** Contains the name and telephone number of a person within the operating unit who can answer questions about the notice.

g. **SUPPLEMENTARY INFORMATION.** Contains detailed narrative information about the notice. Remember, as is illustrated in item (9), below, to the extent any of the following items have been codified or otherwise published in the *Federal Register* a cross reference to the appropriate CFR or *Federal Register* publication may be substituted. At a minimum, the following items must be included in this section:

(1) **Authority.** The statutory authority, EO, or any other legal authority that authorizes the program to provide financial assistance.

(2) **Assistance Listings.** The assistance listing number(s) and program title(s).

(3) **Program Description.** A concise description of the goals and objectives of the program. The description must explain why Federal assistance is being provided, the intended beneficiaries of funded projects, and expected project results/ achievements.

(4) **Funding Availability.** The amount of funds available, expected amount of individual awards, and the purposes for which funds may be spent. If the publication of the notice precedes the passage of the appropriate fiscal year funding legislation, the announcement must state an approximate amount and that funds will be contingent upon availability of funding.

(5) **Eligibility Criteria.** An explicit description of who is eligible to apply (e.g., States, universities, non-profit organizations, for-profit organizations, individuals, etc.), including any limitations imposed by the funding operating unit. Include here whether any cost sharing is required to receive an award.

(6) **Evaluation Criteria.** The evaluation criteria that will be used in evaluating and selecting applications for discretionary funding consideration must be delineated. The criteria must be as

specific as possible and the relative weight of each criterion must be given. If each criterion is of equal weight, the notice must so state. The criteria must provide an adequate basis for a review panel to review an applicant's capabilities and assess its likelihood of successfully performing under the award. Evaluation criteria must address such areas as adequacy of project plans, potential contribution to program objectives, key personnel qualifications, capabilities of the applicant organization, proposed costs, etc.

(7) Selection Procedures. Describe the process and procedures by which recommended applications will be selected. If the operating unit plans to select projects based upon funding priorities/selection factors/policy factors, those must be stated and an explanation must be provided as to how they will be applied to select projects out of the rank order established under the merit evaluations.

(8) Intergovernmental Review. [Insert applicable statement below]

(a) Applications under this program are subject to Executive Order (EO) 12372 (Intergovernmental Review of Federal Programs).

(b) Applications under this program are not subject to Executive Order (EO) 12372 (Intergovernmental Review of Federal Programs).

DOC's OLIA has the responsibility for implementing EO 12372.

(9) Administrative and National Policy Requirements. This section must read as follows: "Department of Commerce Pre-Award Notifications for Grants and Cooperative Agreements, which are contained in the *Federal Register* Notice of 26 December 2014 (79 FR 78390), are applicable to this solicitation."

(10) Administrative Procedure Act and Regulatory Flexibility Act. Prior notice and comment are not required under 5 U.S.C. Section 553, or any other law, for rules relating to public property, loans, grants, benefits or contracts (5 U.S.C. Section 553(a)). Because prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. Section 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis is not required and has not been prepared.

(11) The Supplementary Information must also address EO 13132 (Federalism) and EO 12866 (Regulatory Planning and Review).

(12) Information Collection. Notwithstanding any other provisions of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act, unless that collection displays a current valid OMB control number.

3. Signature. The signature of the person authorized to sign a notice submitted for publication in the *Federal Register* must be placed at the end of the document. The signature must be handwritten in ink, and the name and title of the person signing must be typed directly beneath the signature.

E. Coordination and Clearance

1. Operating units are responsible for obtaining clearances of proposed NOFOs before they are posted. Those NOFOs with funding that exceeds \$100 million and announcements for new financial assistance programs will be forwarded by FALD to AGC/L&R so that AGC/L&R may coordinate the review and clearance of those announcements with OMB. FALD is the final Departmental clearance authority. Proposed NOFOs must be cleared by the Grants Officer, or designate, and the Grants Officer or designee's clearance and/or comments must be provided to FALD before FALD will clear a NOFO.

2. Operating units are responsible for processing and coordinating the clearance of all *Federal Register* notices. Operating units must distribute all notices to OAM, the Electronic Government Team within the Office of Information Technology Policy and Planning, AGC/L&R, and FALD for comment and/or clearance. Once all comments have been reconciled, and clearances received from OAM and the Electronic Government Team, operating units must submit the notice to FALD for final Departmental clearance. Once FALD provides its clearance, the operating unit must upload the notice into DOC's Regulatory Tracking System (RTS), which is the primary tracking system for all notices and regulations. AGC/L&R will approve the notice submitted through RTS and issue a docket number, which authorizes publication in the *Federal Register*. After issuance of the docket number by AGC/L&R, the operating unit is responsible for submitting the notice to the Office of the *Federal Register* for publication and to Congress and the General Accounting Office (GAO), as required by 5 U.S.C. 801 *et seq.*

18. MULTI-YEAR AWARD PROCEDURES

A. General

This chapter prescribes policies for incrementally funding multi-year awards when full funding of the complete period of performance is not available at the beginning of the period of performance. Incremental funding allows Federal funds for a multi-year award to be provided in increments or by allotment, usually on an annual basis.

B. Multi-Year Awards

Multi-year awards are awards which have a period of performance of more than 12 months of activity. Multi-year awards are partially funded when the awards are approved and are subsequently funded in increments. DOC encourages long-range program planning for the award and administration of financial assistance actions. One mechanism for facilitating this goal is funding through multi-year awards. This particularly pertains to awards that support research projects that may span several years. One of the purposes of multi-year awards is to reduce the administrative burden on both the applicant and the operating unit. For example, with proper planning, one application can suffice for the entire multi-year award period. It is DOC's policy that the period of performance of multi-year awards should not exceed five years. Grants Officers should establish additional internal policies for consistent selection and approval of programs and awards that may be incrementally funded under these multi-year award procedures.

C. Incremental Funding Principles

1. Reliability and Predictability. Incremental funding may be considered for programs or long-term awards where funding for the subsequent year(s) is anticipated but not provided at the time the award is approved and where the estimated budget for future budget periods can be forecast with some degree of reliability. These procedures should not be used for programs or long-term awards where the funding allocation may substantially change (either increase or decrease) from initial projections. Incremental funding is provided by adding allotments of funds, usually on an annual basis, to extend the budget period within the previously approved period of performance.

2. Competition. Recipients of multi-year awards should be selected after full and open competition. However, projects under multi-year awards do not re-compete each year even though the awards may be funded incrementally. The Grants Officer approves the award for a period of performance of more than one year (typically three to five years), and continuation amendments to add funding and extend the budget period (or add budget periods if time limited funds) are later approved with less administrative processing by the recipient, the Program Office, and the Grants Office. Multi-year awards also allow the recipient and the operating unit to more reliably plan for future years. The allotment of funding on an incremental basis preserves the ability of the operating unit to discontinue support at points during the period of performance if funding is unavailable or in the interest of the government.

3. Notices of Funding Opportunities. Program Offices must clearly identify in their NOFO when incremental funding is available under the program. The NOFO must clearly state that funding for each year's activity is contingent upon the availability of funds, satisfactory performance, and is at the sole discretion of the operating unit. The NOFO should solicit applications covering the entire multi-year

period and must identify the amount currently available as well as the amounts projected to be available in the future. Instructions for applying for a multi-year award must be contained in the NOFO.

4. Exceptions. Incremental funding is not appropriate for all programs or awards. Grants Officers must exercise good judgment in determining when to approve incremental funding for multi-year awards. Incremental funding is not appropriate, and a fully funded award must be used in the following circumstances:

a. The project is exclusively for construction, alterations or renovations, or acquisition of property; or

b. At the time of award, the total period of DOC support for the project is planned to be less than 24 months. Operating units may apply multi-year procedures to incremental funding for time periods less than a year only if warranted due to program requirements and funding availability. Sufficient justification should be provided to the Grants Officer for this exception to be considered for approval.

5. Duration of Awards. The initial budget period and subsequent continuation amendments extending the budget period should usually be for 12 months. However, the initial budget period may vary from 12 months in order to provide for the continuation of the budget period at an advantageous budget start date, such as the end of the recipient's fiscal year or to coincide with phases of the project contained in the proposal and budget. The recipient has more flexibility in carrying over funds throughout the entire period of performance when no-year appropriations are used to fund the award.

6. Continuation Amendments. The commitment to obligate funding for subsequent budget periods with continuation amendments shall be clearly conditioned upon the availability of funds, satisfactory progress by the recipient and the Program Office's determination that continued funding is in the best interest of the government.

a. The Grants Officer shall execute the amendment after recommendation by the Program Officer that performance under the current budget period is satisfactory and funds are available. The Program Officer should submit to the Grants Officer any continuation application with budget revisions, if applicable. A documented recommendation and certification of funding availability should be submitted at least 30 days prior to the expiration of the budget period. The amendment shall be executed prior to the expiration of each budget period.

b. The recipient should submit an amended application to the Program Officer for review and recommendation to the Grants Officer for approval before the end of the current budget period if the upcoming budget period will have a change in the scope of work or an increase in the funding level from that which was last approved. Otherwise, there is generally no requirement for the recipient to submit subsequent full applications under a multi-year period of performance.

c. Unobligated balances will automatically be carried over upon the continuation of the budget period. For unobligated balances, the SF-425 (Federal Financial Report) will be used as the basis for determining if there is any unobligated balance to be carried over at the end of the current budget period.

d. It is important to distinguish clearly between (1) stopping support of a project by not continuing the budget period with continuation amendments, and (2) termination of an award. The award gives the recipient legal authority to expend the funds awarded. DOC must give recipients due process prior to terminating an award for violation of its terms. Except where required by statute, recipients have no right to a formal appeal process when a continuation is denied because neither the award approval nor extension of a budget period or period of performance gives the recipient any legal entitlement to receive additional funds. Multi-year awards with incremental funding will generally be funded in allotments adding to or continuing the budget period. The new award document (Notice of Award) initially obligates only the first allotment of funds.

D. Preparation of New Multi-Year Award(s)

Following are instructions for the preparation of the Notice of Award and general award conditions for multi-year awards with incremental funding.

1. The Notice of Award for a multi-year award should be prepared in accordance with the guidelines and procedures described in 2 CFR § 200.211 (Information contained in a Federal award).

In order to make it clear that future support is anticipated, the following should be included in the general award conditions:

The period of performance and budget(s) incorporated into this award cover a ____-year period for a total amount of \$_____ in Federal funds. However, Federal funding available at this time is limited to \$_____. Receipt of any prospective funding is contingent upon the availability of funds from Congress, program authority, satisfactory performance, compliance with terms and conditions of the Federal award, continued relevance to program objectives and will be at the sole discretion of the Department of Commerce. The Department of Commerce is not liable for any obligations, expenditures, or commitments which involve any amount in excess of the Federal amount presently available. The recipient will be responsible for any and all termination costs it may incur should prospective funding not become available. No legal liability will exist or result on the part of the Federal Government for payment of any portion of the remaining funds which have not been made available under the award. Notifications affecting funding or notice of non-availability of additional funding for prospective years will be made only by the Grants Officer. The amendment to obligate prospective funding available shall be made prior to the expiration of each year's activities, if possible.

The period of performance for this action is _____ through _____.

Funds are available for obligation from the beginning of the award through the end of the budget period. With each year's amendment to add funds, the budget period is EXTENDED from the date of award, so that by the last year of the award, for example, the 5-year period of performance equals the 5-year budget period.

2. An itemized budget must be incorporated into the award which includes the Federal and non-Federal share of funding that is currently available.

E. Preparation of Amendment(s)

Following are instructions for the preparation of amendments for multi-year awards with incremental funding.

1. As prospective funding becomes available for extended budget periods, the Grants Officer shall notify the recipient of the obligation of prospective funding by issuing an amendment to the award. This should be done prior to the expiration of the current approved budget period.

2. The amendment should include the following terms in the general award conditions:

This amendment provides \$ _____ in Federal funding for the continued funding of this multi-year award for a total of \$ _____. Any commitments, obligations, or expenditures in excess of that amount of Federal funds will be made at the recipient's risk. The funding period for this amendment is extended through (date). Future funding is contingent upon the availability of funds, satisfactory performance on the current and/or previous award, continued relevance to program objectives, and is at the sole discretion of the Department of Commerce.

a. Work to be performed with this funding should correspond to that identified in the original application with any approved revisions. The original application and any approved revisions will be incorporated into the award by reference in this amendment.

3. If the work to be performed with the prospective funding does not correspond to that identified in the original application, along with any approved revisions, the recipient should submit a request for approval of any revisions to the last approved budget and work to be performed. This request should be submitted to the Program Officer for approval by the Grants Officer. It should be noted that any revision to the work to be performed should not change the basic scope of work originally approved. Changes to the approved scope of work must be incorporated into an award by the Grants Officer in a formal amendment.

4. In the event that funding does not become available, or the determination is made not to provide additional funding for prospective year's activities, the Grants Officer shall notify the recipient in writing prior to the expiration of the current budget period.

5. While DOC reserves the right not to provide all or a portion of a prospective year's funding, every effort should be made to minimize changes to the originally approved funding levels.

a. If funding levels increase over the amount stipulated in the general award condition(s), the recipient must submit a supplemental application for the amount of the increase along with a new budget and required certifications. A significant increase in funding may lead to an unauthorized change in the scope of work.

b. If funding levels are significantly decreased, the recipient must submit a request for budget revision to the Program Officer. A significant decrease in funding could lead to an unauthorized change in the scope of work. The Program Officer will review the request and make written notification to the Grants Officer who will notify the recipient of DOC's approval or disapproval. If the Grants Officer approves the revised decreased budget, an amendment to the award shall be issued.