

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 assets 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 applicable 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 Federal agencies transfer funds to DOC for implementation of 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.