

DEPARTMENT OF COMMERCE
FINANCIAL ASSISTANCE
STANDARD TERMS AND CONDITIONS



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PREFACE

This document sets out the standard terms and conditions generally applicable to U.S. Department of Commerce (“DOC” or “Commerce”) financial assistance awards (hereinafter referred to as the “DOC ST&Cs” or “Standard Terms”). A non-Federal entity¹ receiving a DOC financial assistance award must, in addition to the assurances made as part of the application, comply and require each of its contractors and subcontractors employed in the completion of the project to comply with all applicable statutes, regulations, executive orders (E.O.s), Office of Management and Budget (OMB) circulars, provisions of the OMB Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (codified at 2 C.F.R. Part 200) (OMB Uniform Guidance), provisions of these Standard Terms, any other incorporated terms and conditions, and approved applications.²

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

Some of the Standard Terms herein contain, by reference or substance, a summary of the pertinent statutes, regulations published in the *Federal Register* or Code of Federal Regulations (C.F.R.), E.O.s, OMB circulars, or the certifications and assurances provided by applicants through Standard Forms (e.g., SF-424, SF-424B, or SF-424D) or through DOC forms (e.g., Form CD-511). To the extent that it is a summary, such Standard Term provision is not in derogation of, or an amendment to, any such statute, regulation, E.O., OMB circular, certification, or assurance.

¹ Please note that the OMB Uniform Guidance uses the term “non-Federal entity” to generally refer to an entity that carries out a Federal award as a recipient or subrecipient. Because some of the provisions of these DOC ST&Cs apply to recipients rather than subrecipients, or vice versa, for clarity, these DOC ST&Cs use the terms “non-Federal entity”, “recipient”, and “subrecipient”. In addition, the OMB Uniform Guidance uses the term “pass-through entity” to refer to a non-Federal entity that makes a subaward.

“Non-Federal entity” is defined at 2 C.F.R. § 200.69 as “a state, local government, Indian tribe, institution of higher education (IHE), or nonprofit organization that carries out a Federal award as a recipient or subrecipient.”

“Recipient” is defined at 2 C.F.R. § 200.86 as “a non-Federal entity that receives a Federal award directly from a Federal awarding agency to carry out an activity under a Federal program. The term recipient does not include subrecipients.”

“Subrecipient” is defined at 2 C.F.R. § 200.93 as “a non-Federal entity that receives a subaward from a pass-through entity to carry out part of a Federal program; but does not include an individual that is a beneficiary of such program. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency.”

“Pass-through entity” is defined as 2 C.F.R. § 200.74 as “a non-Federal entity that provides a subaward to a subrecipient to carry out part of a Federal program.”

² As set forth in 2 C.F.R. § 200.101(c), Federal agencies may apply 2 C.F.R. Part 200, subparts A through E, to for-profit entities, foreign public entities, or foreign organizations, except where the Federal awarding agency determines that the application of these subparts would be inconsistent with the international obligations of the United States or the statute or regulations of a foreign government.

A. PROGRAMMATIC REQUIREMENTS

.01 Performance (Technical) Reports

- a. Recipients must use OMB-approved governmentwide standard information collections when providing financial and performance information and, as appropriate and in accordance with the above-mentioned information collections, are required to relate financial data to the performance accomplishments of the Federal award. When applicable, recipients must also provide cost information to demonstrate cost effective practices (e.g., through unit cost data). The recipient's performance will be measured in a way that will help the Federal awarding agency and other non-Federal entities to improve program outcomes, share lessons learned, and spread the adoption of promising practices. As described in 2 C.F.R. § 200.210 "Information contained in a Federal award," the Federal awarding agency will identify the timing and scope of expected performance by the award recipient as related to the outcomes intended to be achieved by the Federal program.
- b. Recipients must submit performance (technical) reports, which may be Form SF-PPR "Performance Progress Report" or any successor form, or another format as required by the Federal awarding agency, electronically or in hard copy (no more than an original and two copies), in accordance with the award conditions, to the Federal Program Officer. Performance reports should be submitted in the same frequency as the Form SF-425 "Federal Financial Report", unless otherwise authorized by the Grants Officer.
- c. Performance (technical) reports shall contain the information prescribed in the OMB Uniform Guidance, specifically 2 C.F.R. § 200.328 ("Monitoring and reporting program performance"), unless otherwise specified in the award conditions.

.02 Reporting on Real Property

The Federal awarding agency or pass-through entity (as defined at 2 C.F.R. § 200.74) must require a non-Federal entity to submit reports (using Form SF-429 "Real Property Status Report" or any successor form) at least annually on the status of real property in which the Federal government retains an interest, unless the Federal interest in the real property extends 15 years or longer. In those instances where the Federal interest attached is for a period of 15 years or more, the Federal awarding agency or pass-through entity, at its option, may require the non-Federal entity to report at various multi-year frequencies (e.g., every two years or every three years, not to exceed a five-year reporting period; or a Federal awarding agency or pass-through entity may require annual reporting for the first three years of a Federal award and thereafter require reporting every five years).

.03 Unsatisfactory Performance

Failure to perform the work in accordance with the terms of the award and maintain satisfactory performance as determined by the Federal awarding agency may result in the imposition of additional award conditions pursuant to 2 C.F.R. § 200.207 ("Specific conditions") or other

appropriate enforcement action as specified in 2 C.F.R. § 200.338 (“Remedies for noncompliance”). *See also* DOC ST&C A.06 “Non-Compliance with Award Provisions.”

.04 Programmatic Changes

In accordance with 2 C.F.R. § 200.308 (“Revisions of budget and program plans”), the recipient shall report programmatic changes, including all changes to the scope of the award, to the Program Officer, who forwards the request to the Grants Officer. In addition, the recipient shall request prior approvals in accordance with 2 C.F.R. § 200.407 (“Prior written approval (prior approval)”).

.05 Other Federal Awards with Similar Programmatic Activities

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

.06 Non-Compliance with Award Provisions

Failure to comply with the provisions of an award may be considered grounds for appropriate enforcement action pursuant to 2 C.F.R. § 200.338 (“Remedies for noncompliance”), including but not limited to: the imposition of additional award conditions in accordance with 2 C.F.R. § 200.207 (“Specific conditions”); temporarily withholding award payments pending the correction of the deficiency; the disallowance of award costs and the establishment of an accounts receivable; wholly or partially suspending or terminating an award; initiating suspension or debarment proceedings in accordance with 2 C.F.R. parts 180 and 1326; and such other remedies as may be legally available. *See also* 2 C.F.R. §§ 200.339 (“Termination”) through 200.342 (“Effects of suspension and termination”). In addition, the failure to comply with the provisions of a DOC award may adversely impact the availability of funding under other active DOC or Federal awards and may also have a negative impact on a recipient’s eligibility for future DOC or Federal awards.

.07 Prohibition against Assignment by the Non-Federal Entity

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

.08 Disclaimer Provisions

- a. The United States expressly disclaims any and all responsibility or liability to the non-Federal entity or third persons for the actions of the non-Federal entity or third persons

resulting in death, bodily injury, property damages, or any other losses resulting in any way from the performance of this award or any subaward, contract, or subcontract under this award.

- b. The acceptance of this award or any subaward by the non-Federal entity does not in any way constitute an agency relationship between the United States and the non-Federal entity.

B. FINANCIAL REQUIREMENTS

.01 Financial Management

- a. In accordance with 2 C.F.R. § 200.302(a) (“Financial Management”), each State must expend and account for the Federal award in accordance with State laws and procedures for expending and accounting for the State’s own funds. In addition, the State’s and any other non-Federal entity’s financial management systems, including records documenting compliance with Federal statutes, regulations, and the terms and conditions of the Federal award, must be sufficient to permit the preparation of reports required by general and program-specific terms and conditions; and the tracing of funds to a level of expenditures adequate to establish that such funds have been used in accordance with Federal statutes, regulations, and the terms and conditions applicable to the Federal award. *See also* 2 C.F.R. § 200.450 (“Lobbying”) for additional management requirements to verify that Federal funds are not used for unallowable lobbying costs.
- b. The financial management system of each non-Federal entity must provide all information required by 2 C.F.R. § 200.302(b). *See also* 2 C.F.R. §§200.333 (“Retention requirements for records”); 200.334 (“Requests for transfer of records”); 200.335 (“Methods for collection, transmission and storage of information”); 200.336 (“Access to records”); and 200.337 (“Restrictions on public access to records”).

.02 Financial Reports

- a. In accordance with 2 C.F.R. § 200.327 (“Financial reporting”), the recipient shall submit a “Federal Financial Report” (Form SF-425 or any successor form) on a semi-annual basis for the periods ending March 31 and September 30, or any portion thereof, unless otherwise specified in a special award condition. Reports are due no later than 30 days following the end of each reporting period. A final Form SF-425 shall be submitted within 90 days after the expiration of the period of performance.
- b. The reports must be submitted to the Federal awarding agency as directed by the Grants Officer electronically, or in hard copy (no more than an original and two copies), in accordance with the award conditions.

.03 Award Payments

- a. Consistent with 2 C.F.R. § 200.305(a) (“Payment”), for States, payments are governed by Treasury-State Cash Management Improvement Act (CMIA) agreements and default procedures codified at 31 C.F.R. Part 205 “Rules and Procedures for Efficient Federal-State Funds Transfers” and Treasury Financial Manual Volume I, 4A-2000 “Overall Disbursing Rules for All Federal Agencies”.
- b. Consistent with 2 C.F.R. § 200.305(b), for non-Federal entities other than States, payment methods must minimize the amount of time elapsing between the transfer of funds from the U.S. Treasury or the pass-through entity and the disbursement by the non-Federal entity.
 1. The Grants Officer determines the appropriate method of payment and, unless otherwise specified in a special award condition, the advance method of payment shall be authorized. Advances shall be limited to the minimum amounts necessary to meet immediate disbursement needs. DOC policy requires that in the usual case, non-Federal entities time advance payment requests so that Federal funds are on hand for a maximum of three calendar days before being disbursed by the non-Federal entity for eligible award costs. In no case should advances exceed the amount of cash required for a 30-day period. Interest earned on Federal advance payments deposited in interest-bearing accounts must be remitted annually to the Department of Health and Human Services, Payment Management System, Rockville, MD 20852. Interest amounts up to \$500 per year may be retained by the non-Federal entity for administrative expenses.
 2. If a non-Federal entity demonstrates an unwillingness or inability to establish procedures that will minimize the time elapsing between the transfer of funds and disbursement by the non-Federal entity or if a non-Federal entity otherwise fails to continue to qualify for the advance method of payment, the Grants Officer may change the method of payment to reimbursement only.
- c. Unless otherwise provided for in the award terms, payments under this award will be made using the Department of Treasury’s Automated Standard Application for Payment (ASAP) system. Under the ASAP system, payments are made through preauthorized electronic funds transfers directly to the non-Federal entity’s bank account, in accordance with the requirements of the Debt Collection Improvement Act of 1996. In order to receive payments under ASAP, non-Federal entities are required to enroll with the Department of Treasury, Financial Management Service, Regional Financial Centers, which allows them to use the on-line and Voice Response System (VRS) method of withdrawing funds from their ASAP established accounts. The following information will be required to make withdrawals under ASAP:
 1. ASAP account number – the Federal award identification number found on the cover sheet of the award;
 2. Agency Location Code (ALC); and

3. Region Code.

Non-Federal entities enrolled in the ASAP system do not need to submit a Form SF-270 “Request for Advance or Reimbursement”, for payments relating to their award. Awards paid under the ASAP system will contain a special award condition, clause, or provision describing enrollment requirements and any controls or withdrawal limits set in the ASAP system.

When the Form SF-270 “Request for Advance or Reimbursement” (or successor form) is used to request payment, the non-Federal entity shall submit the request no more frequently than monthly, and advances shall be approved for periods to cover only expenses anticipated over the next 30 days. In these cases, the non-Federal entity must complete the Form SF-3881 “ACH Vendor Miscellaneous Payment Enrollment Form” (or successor form) and Form SF-270 and submit these forms to the Grants Officer. Form SF-3881 enrollment must be completed before the first award payment can be made via a Form SF-270 request.

- d. The Federal award identification number must be included on all payment-related correspondence, information, and forms.

.04 Federal and Non-Federal Sharing

- a. Awards that include Federal and non-Federal sharing incorporate a budget consisting of shared allowable costs. If actual allowable costs are less than the total approved budget, the Federal and non-Federal cost shares shall be calculated by applying the approved Federal and non-Federal cost share ratios to actual allowable costs. If actual allowable costs exceed 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 non-Federal entity must meet its cost share commitment over the life of the award; failure to do so may result in the assignment of special award conditions or other further action as specified in Standard Term A.06 “Non-Compliance with Award Provisions”. In addition, under 2 C.F.R. § 200.306(c) “(Cost sharing or matching)”, unrecovered indirect costs, including indirect costs on cost sharing or matching, may be included as part of cost sharing or matching only with the written prior approval of the Federal awarding agency. The non-Federal entity must create and maintain sufficient records justifying all non-federal sharing requirements to facilitate questions and audits, see Section F of these Standard Terms, “Audits,” for audit requirements. *See* 2 C.F.R. § 200.306 for additional requirements regarding cost sharing.
- c. Under Federal research proposals, voluntary committed cost sharing is not expected. It cannot be used as a factor during the merit review of applications or proposals, but may be considered if it is both in accordance with Federal awarding agency regulations and specified

in a notice of funding opportunity. Criteria for considering voluntary committed cost sharing and any other program policy factors that may be used to determine who may receive a Federal award must be explicitly described in the notice of funding opportunity. Furthermore, only mandatory cost sharing or cost sharing specifically committed in the project budget must be included in the organized research base for computing the indirect (F&A) cost rate or reflected in any allocation of indirect costs. *See also* 2 C.F.R. §§ 200.414 (“Indirect (F&A) costs”), 200.203 (“Notices of funding opportunities”), and Appendix I to 2 C.F.R. Part 200—Full Text of Notice of Funding Opportunity.

.05 Budget Changes and Transfer of Funds among Categories

- a. Recipients are required to report deviations from budget or project scope or objective, and request prior approvals from Federal awarding agencies for budget and program plan revisions, in accordance with 2 C.F.R. § 200.308 (“Revision of budget and program plans”). Requests for such budget or project changes must be submitted to the Grants Officer who shall make the final determination on such requests and notify the non-Federal entity in writing.
- b. In accordance with 2 C.F.R. § 200.308(e), transfers of funds by the recipient among direct cost categories are permitted for awards in which the Federal share of the project is \$150,000 or less. For awards in which the Federal share of the project exceeds \$150,000, transfers of funds among direct cost categories must be approved in writing by the Grants Officer when the cumulative amount of such direct costs transfers exceeds 10 percent of the total budget as last approved by the Grants Officer. The 10 percent threshold applies to the total Federal and non-Federal funds authorized by the Grants Officer at the time of the transfer request. This is the accumulated amount of Federal funding obligated to date by the Grants Officer along with any non-Federal share. The same requirements apply to the cumulative amount of transfer of funds among programs, functions, and activities. This transfer authority does not authorize the recipient to create new budget categories within an approved budget without Grants Officer approval. Any transfer that causes any Federal appropriation, or part thereof, to be used for an unauthorized purpose will not be permitted. In addition, this provision does not prohibit the recipient from requesting Grants Officer approval for revisions to the budget. *See* 2 C.F.R. § 200.308 (as applicable) for specific requirements concerning budget revisions and transfer of funds between budget categories.

.06 Indirect or Facilities and Administrative Costs

- a. Indirect costs (or facilities and administration (F&A)) costs for major institutions of higher education and major nonprofit organizations) can generally be defined as costs incurred for a common or joint purpose benefitting more than one cost objective, and not readily assignable to the cost objectives specifically benefitted, without effort disproportionate to the results achieved. Indirect (F&A) costs will not be allowable charges against an award unless permitted under the award and specifically included as a line item in the award’s approved budget. *See* the definition of indirect (F&A) costs at 2 C.F.R. § 200.56 (“Indirect (facilities & administrative (F&A)) costs”).

- b. Excess indirect costs may not be used to offset unallowable direct costs.
- c. Cognizant Agency for Indirect (F&A) Costs.

OMB established the cognizant agency concept, under which a single agency represents all others in dealing with non-Federal entities in common areas. The cognizant agency for indirect costs reviews and approves non-Federal entities' indirect cost rates.

1. Determining the Cognizant Agency for Non-Federal Entities that are State, local, and Indian Tribal Governments; Institutions of Higher Education; Hospitals; and Non-Profit Organizations (Non-Commercial Organizations). In accordance with 2 C.F.R. § 200.19 (“Cognizant agency for indirect costs”), the cognizant agency for indirect costs is the Federal agency responsible for reviewing, negotiating, and approving cost allocation plans or indirect cost proposals on behalf of all Federal agencies. Approved rates must be accepted by other agencies, unless required by Federal statute or regulation or when approved by a Federal agency awarding head or delegate in accordance with 2 C.F.R. § 200.414(c) (“Indirect (F&A) costs”).

If indirect costs are permitted and the non-Federal entity would like to include indirect costs in its budget, but the non-Federal entity has not previously established an indirect cost rate with a Federal agency, the requirements for determining the relevant cognizant agency and developing and submitting indirect (F&A) cost rate proposals and cost allocation plans are contained in Appendices III – VII to 2 C.F.R. Part 200 as follows:

- i. Appendix III to 2 C.F.R. Part 200 – Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Institutions of Higher Education (IHEs);
 - ii. Appendix IV to 2 C.F.R. Part 200 – Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Nonprofit Organizations;
 - iii. Appendix V to 2 C.F.R. Part 200 – State/Local Government and Indian Tribe-Wide Central Service Cost Allocation Plans;
 - iv. Appendix VI to 2 C.F.R. Part 200 – Public Assistance Cost Allocation Plans;
 - v. Appendix VII to 2 C.F.R. Part 200 – States and Local Government and Indian Tribe Indirect Cost Proposals.
2. Commercial Organizations. For commercial organizations, the term “cognizant Federal agency” generally is defined as the agency that provides the largest dollar amount of negotiated contracts, including options. *See* 48 C.F.R. § 42.003. If the only Federal funds received by a commercial organization are DOC award funds, then DOC becomes the cognizant Federal agency for the purpose of indirect cost negotiations. For those organizations for which DOC is cognizant, DOC or its designee will negotiate a rate in accordance with the provisions of 2 C.F.R. § 200.414 using the cost principles found in 48 C.F.R. Part 31, “Contract Cost Principles and Procedures.” For guidance on how to put an indirect cost plan together go to:

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

3. General Review Procedures Where DOC is the Cognizant Agency.

- i. Within 90 days of the award start date the non-Federal entity shall submit to the Grants Officer of the relevant funding bureau any documentation (indirect cost proposal, cost allocation plan, etc.) necessary to allow the agency to perform the indirect cost rate proposal review.
 - ii. The non-Federal entity can use the fixed rate proposed in the indirect cost plan as a provisional rate until such time as the DOC provides a response to the submitted plan.
4. When DOC is not the oversight or cognizant Federal agency, the non-Federal entity shall provide the Grants Officer with a copy of a negotiated rate agreement or a copy of the transmittal letter submitted to the cognizant or oversight Federal agency requesting a negotiated rate agreement.
- d. If the non-Federal entity fails to submit required documentation to DOC within 90 days of the award start date, the Grants Officer may amend the award to preclude the recovery of any indirect costs under the award. If the DOC, oversight, or cognizant Federal agency determines there is a finding of good and sufficient cause to excuse the non-Federal entity's delay in submitting the documentation, an extension of the 90-day due date may be approved by the Grants Officer.
 - e. The maximum dollar amount of allocable indirect costs for which DOC will reimburse the recipient shall be the lesser of:
 1. The line item amount for the Federal share of indirect costs contained in the approved award budget, including all budget revisions approved in writing by the Grants Officer; or
 2. The Federal share of the total indirect costs allocable to the award based on the indirect cost rate approved by the cognizant agency for indirect costs and applicable to the period in which the cost was incurred, provided that the rate is approved on or before the award end date.
 - f. In accordance with 2 C.F.R. § 200.414(g), any non-Federal entity that has a negotiated indirect cost rate may apply to the entity's cognizant agency for indirect costs for a one-time extension of a currently negotiated indirect cost rate for a period of up to four years, reducing the frequency of rate calculations and negotiations between an institution and its cognizant agency.
 - g. In addition, in accordance with 2 C.F.R. § 200.414(f), any non-Federal entity that has never received a negotiated indirect cost rate, except for those non-Federal entities described in Paragraph D.1.b of Appendix VII to 2 C.F.R. Part 200 (specifically, a governmental department or agency that receives more than \$35 million in direct Federal funding), may elect to charge a de minimis rate of 10 percent of modified total direct costs.

.07 Incurring Costs or Obligating Federal Funds Before and After the Period of Performance

- a. In accordance with 2 C.F.R. § 200.309 (“Period of performance”), a non-Federal entity may charge to the Federal award only allowable costs incurred during the period of performance, which is the period established in the award document during which Federal sponsorship begins and ends and, as defined at 2 C.F.R. § 200.77, is “the time during which the non-Federal entity may incur new obligations to carry out the work authorized under the Federal award”. The period of performance may sometimes be referred to as the “project period” or “award period”.
- b. In accordance with 2 C.F.R. § 200.458 (“Pre-award costs”), pre-award costs are allowable only to the extent that they would have been allowable if incurred after the date of the Federal award and only with the written approval of the Federal awarding agency.
- c. The non-Federal entity shall not incur costs or obligate funds for any purpose pertaining to the operation of the project, program, or activities beyond the period of performance. The only costs that are authorized for a period of up to 90 days following the end of the period of performance are those strictly associated with close-out activities. Close-out activities are normally limited to the preparation of final progress, financial, and required project audit reports unless otherwise approved in writing by the Grants Officer. The Federal awarding agency or pass-through entity may approve extensions of the 90-day closeout period upon a request by the non-Federal entity as provided in 2 C.F.R. § 200.343 (“Closeout”).
- d. Unless otherwise authorized in 2 C.F.R § 200.343(a) or a special award condition, any extension of the period of performance can only be authorized by the Grants Officer in writing. Verbal or written assurances of funding from anyone other than the Grants Officer shall not constitute authority to obligate funds for programmatic activities beyond the end of the period of performance.
- e. The DOC has no obligation to provide any additional prospective funding. Any amendment of the award to increase funding and to extend the period of performance is at the sole discretion of DOC.

.08 Tax Refunds

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

C. INTERNAL CONTROLS

Consistent with 2 C.F.R. § 200.303 (“Internal controls”), each non-Federal entity must:

1. Establish and maintain effective internal control over the Federal award that provides reasonable assurance that the non-Federal entity is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award. These internal controls should be in compliance with guidance in “Standards for Internal Control in the Federal Government” issued by the Comptroller General of the United States (available online at <http://www.gao.gov/assets/80/76455.pdf>) and the “Internal Control Integrated Framework”, issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) (available online at <http://www.coso.org/documents/Internal%20Control-Integrated%20Framework.pdf>).
2. Comply with Federal statutes, regulations, and the terms and conditions of Federal awards.
3. Evaluate and monitor the non-Federal entity’s compliance with Federal statutes, regulations, and the terms and conditions of Federal awards.
4. Take prompt action when instances of noncompliance are identified including noncompliance identified in audit findings; and
5. Take reasonable measures to safeguard protected personally identifiable information and other information the Federal awarding agency or pass-through entity designates as sensitive or the non-Federal entity considers sensitive consistent with applicable Federal, state and local laws regarding privacy and obligations of confidentiality.

D. PROPERTY STANDARDS

.01 Standards

Each non-Federal entity must comply with the Property Standards set forth in 2 C.F.R. §§ 200.310 (“Insurance coverage”) through 200.316 (“Property trust relationship”).

.02 Real and Personal Property

- a. In accordance with 2 C.F.R. § 200.316, real property, equipment, and intangible property acquired or improved with a Federal award must be held in trust by the non-Federal entity as trustee for the beneficiaries of the project or program under which the property was acquired or improved. This trust relationship exists throughout the duration of the property’s estimated useful life, as determined by the Grants Officer in consultation with the Program Office, during which time the Federal Government retains an undivided, equitable reversionary interest in the property (Federal Interest). During the duration of the Federal Interest, the non-Federal entity shall comply with all use and disposition requirements and restrictions as

set forth in 2 C.F.R. §§ 200.310 through 200.316, as applicable, and in the terms and conditions of the Federal award.

- b. The Grants Officer may require a non-Federal entity to execute a security interest or other public notice of record to indicate that real or personal property acquired or improved in whole or in part with Federal funds is subject to the Federal Interest, and that certain use and disposition requirements apply to the property. The security interest or other public notice must be acceptable in form and substance to the DOC and must be perfected and placed of record in accordance with applicable State and local law, with continuances re-filed as appropriate. In such cases, the Grants Officer may further require the non-Federal entity to provide the DOC with a written statement from a licensed attorney in the jurisdiction where the property is located certifying that the Federal Interest has been protected, as required under the award and in accordance with applicable State and local law. The attorney's statement, along with a copy of the instrument reflecting the recordation of the Federal Interest, shall be returned to the Grants Officer. The Grants Officer may elect not to release any or a portion of the Federal award funds until the non-Federal entity has complied with this provision and any other applicable award terms or conditions, unless other arrangements satisfactory to the Grants Officer are made.
- c. In accordance with 2 C.F.R. § 200.329 ("Reporting on real property"), the Federal awarding agency or pass-through entity must require a non-Federal entity to submit reports (using Form SF-429 "Real Property Status Report" or any successor form) at least annually on the status of real property in which the Federal government retains an interest, unless the Federal interest in the real property extends 15 years or longer. In those instances where the Federal Interest attached is for a period of 15 years or more, the Federal awarding agency or pass-through entity, at its option, may require the non-Federal entity to report at various multi-year frequencies (e.g., every two years or every three years, not to exceed a five-year reporting period; or a Federal awarding agency or pass-through entity may require annual reporting for the first three years of a Federal award and thereafter require reporting every five years). The Federal awarding agency or pass-through entity may also require a non-Federal entity to periodically submit reports (using Form SF-428 "Tangible Personal Property Report" or any successor form) concerning tangible personal property in which the Federal Government retains an interest. In addition, the Federal awarding agency or pass-through entity may require a non-Federal entity to submit Form SF-429 and/or Form SF-428 in connection with a non-Federal entity's request to acquire, encumber, dispose of, or take any other action pertaining to real property or tangible personal property acquired or improved, in whole or in part, under a DOC financial assistance award or to Federally-owned property provided under a DOC award.

.03 Intellectual Property Rights

- a. General. The rights to any work produced or purchased under a Federal award are determined by 2 C.F.R. § 200.315 ("Intangible property"). The non-Federal entity owns any work produced or purchased under a Federal award subject to the DOC's royalty-free, nonexclusive, and irrevocable right to obtain, reproduce, publish, or otherwise use the work

or authorize others to receive, reproduce, publish, or otherwise use the work for Government purposes. In accordance with 2 C.F.R. § 200.315(d), the Federal Government has the right to obtain, reproduce, publish, or otherwise use the data produced under a Federal award and authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.

- b. Inventions. Unless otherwise provided by law, the rights to any invention made by a non-Federal entity under a Federal award are determined by the Bayh-Dole Act, Pub. L. No. 96-517, as amended, and as codified in 35 U.S.C. § 200 *et seq.*, except as otherwise required by law. The specific requirements governing the development, reporting, and disposition of rights to inventions and patents resulting from Federal awards are described in more detail in 37 C.F.R. Part 401 and in particular, in the standard patent rights clause in 37 C.F.R. § 401.14, which is hereby incorporated by reference into this award.

1. Ownership.

- i. Non-Federal entity. The non-Federal entity has the right to elect to retain title to any invention it makes (conceived or first actually reduced to practice) or is made by its employees. A non-Federal entity that is a non-profit organization, which includes a university or other institution of higher learning, may not assign to a third party its rights to such an invention without the permission of DOC unless that assignment is to a patent management organization (e.g., a university's Research Foundation). The non-Federal entity's ownership rights are subject to the Government's nonexclusive, nontransferable, irrevocable, paid-up license and other rights.
- ii. Department. If the non-Federal entity elects not to retain title, fails to disclose the invention to the Federal awarding agency within the required time limits, or does not file a patent application within the time limits set forth in the standard patent rights clause, the DOC may request an assignment of all rights, which is normally subject to a limited royalty free nonexclusive revocable license for the non-Federal entity. The DOC owns any invention made solely by its employees, but may license the non-Federal entity in accordance with the procedures in 37 C.F.R. Part 404.
- iii. Inventor/Employee. If neither the non-Federal entity nor the DOC is interested in owning an invention by a non-Federal entity employee, the non-Federal entity, with the written concurrence of the DOC, may allow the inventor/employee to retain ownership of the invention subject to certain restrictions as described in 37 C.F.R. § 401.9.
- iv. Joint inventions. Inventions made jointly by a non-Federal entity and a DOC employee will be owned jointly by the non-Federal entity and the DOC. However, the DOC may transfer or license its rights to the non-Federal entity as authorized by 35 U.S.C. § 202(e) and 37 C.F.R. § 401.10 if the non-Federal entity is willing to patent and license the invention usually in exchange for a share of "net" royalties

based on the number of inventors (e.g., 50-50 if there is one non-Federal entity inventor and one DOC employee inventor). The agreement will be prepared by the DOC and may include other provisions, such as a royalty free license to the Government and certain other entities. The provision at 35 U.S.C. § 202(e) also authorizes the non-Federal entity to transfer its rights to the Government, which can agree to share royalties similarly as described above.

2. Responsibilities - iEdison. The non-Federal entity has responsibilities and duties set forth in the standard patent rights clause, which are not described below. The non-Federal entity is expected to comply with all the requirements of the standard patent rights clause and 37 C.F.R. Part 401. Non-Federal entities are required to submit their disclosures, elections, and requests for waiver from any requirement for substantial U.S. manufacture, electronically using the Interagency Edison extramural invention reporting system (iEdison) at www.iedison.gov. Non-Federal entities may obtain a waiver of this electronic submission requirement by providing to DOC compelling reasons for allowing the submission of paper copies of reports related to inventions.
 - c. Patent Notification Procedures. Pursuant to E.O. 12889 (58 FR 69681, 1993), the DOC is required to notify the owner of any valid patent covering technology whenever the DOC or a non-Federal entity, without making a patent search, knows (or has demonstrable reasonable grounds to know) that technology covered by a valid United States patent has been or will be used without a license from the owner. To ensure proper notification, if the non-Federal entity uses or has used patented technology under this award without a license or permission from the owner, the non-Federal entity must notify the Grants Officer.
- This notice does not constitute authorization or consent by the Government to any copyright or patent infringement occurring under the award.
- d. A non-Federal entity may copyright any work produced under a Federal award, subject to the DOC's royalty-free, nonexclusive, and irrevocable right to obtain, reproduce, publish, or otherwise use the work, or authorize others to do so for Government purposes. Works jointly authored by DOC and non-Federal entity employees may be copyrighted, but only the part of such works authored by the non-Federal entity is protectable in the United States because, under 17 U.S.C. § 105, works produced by Government employees are not copyrightable in the United States. On occasion and as permitted under 17 U.S.C. § 105, DOC may require the non-Federal entity to transfer to DOC a copyright in a particular work for Government purposes or when DOC is undertaking primary dissemination of the work.
 - e. Freedom of Information Act (FOIA). In response to a FOIA request for research data relating to published research findings (as defined by 2 C.F.R. § 200.315(e)(2)) produced under a Federal award that were used by the Federal government in developing an agency action that has the force and effect of law, the Federal awarding agency will request, and the non-Federal entity must provide, within a reasonable time, the research data so that they can be made available to the public through the procedures established under the FOIA.

E. PROCUREMENT STANDARDS

1. States. Pursuant to 2 C.F.R. § 200.317 (“Procurements by states”), when procuring property and services under this Federal award, a State must follow the same policies and procedures it uses for procurements from its non-Federal funds. The State must comply with 2 C.F.R. § 200.322 (“Procurement of recovered materials”), and ensure that every purchase order or other contract includes any clauses required by 2 C.F.R. § 200.326 (“Contract provisions”).
2. Other Non-Federal Entities. All other non-Federal entities, including subrecipients of a State, must follow the requirements of 2 C.F.R. §§ 200.318 (“General procurement standards”) through 200.326 (“Contract provisions”). This includes the requirement that non-Federal entities maintain written standards of conduct covering conflicts of interest and governing the performance of their employees engaged in the selection, award, and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest.

F. AUDITS

Under the Inspector General Act of 1978, as amended, 5 U.S.C. App. 3, §§ 1 *et seq.*, an audit of the award may be conducted at any time. The Inspector General of the DOC, or any of his or her duly authorized representatives, shall have the right to access any pertinent books, documents, papers, and records of the non-Federal entity, whether written, printed, recorded, produced, or reproduced by any electronic, mechanical, magnetic, or other process or medium, in order to make audits, inspections, excerpts, transcripts, or other examinations as authorized by law. This right also includes timely and reasonable access to the non-Federal entity’s personnel for the purpose of interview and discussion related to such documents. *See* 2 C.F.R. § 200.336 (“Access to records”). When the DOC Office of Inspector General (OIG) requires a program audit on a DOC award, the OIG will usually make the arrangements to audit the award, whether the audit is performed by OIG personnel, an independent accountant under contract with DOC, or any other Federal, State, or local audit entity.

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

- a. Organization-wide or program-specific audits shall be performed in accordance with the Single Audit Act Amendments of 1996, as implemented by Subpart F to 2 C.F.R. Part 200, “Audits Requirements.” Non-Federal entities that are subject to the provisions of 2 C.F.R. Part 200 and that expend \$750,000 or more in a year in Federal awards shall have an audit conducted for that year in accordance with the relevant requirements. Within the earlier of 30 calendar days after receipt of the auditor’s report(s), or nine months after the end of the audit period, a copy of the audit shall be submitted electronically to the Federal Audit Clearinghouse website at: <http://harvester.census.gov/sac/>. If it is necessary to submit by paper, the address for submission is:

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

Within 90 days of the end of the fiscal year of a non-Federal entity subject to Subpart F of 2 C.F.R. Part 200, the entity is responsible for notifying 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. Unless otherwise specified in the terms and conditions of the award, non-Federal entities that are not subject to Subpart F of 2 C.F.R. Part 200 (e.g., for-profit entities) and that expend \$750,000 or more in DOC funds during their fiscal year must have an audit conducted for that year in accordance with Subpart F of 2 C.F.R. Part 200. The audit shall be completed and submitted to the Grants Officer within the earlier of 30 calendar days of the non-Federal entity's receipt of the audit report or nine months following the end of the non-Federal entity's fiscal year.

For-profit entities that expend less than \$750,000 in DOC funds in a given fiscal year are not required to have an annual audit for that year but must make their award-related records available to DOC or other designated officials for review and audit. Failure to provide audit reports within the timeframes specified above may result in appropriate enforcement action, up to and including termination of the award, and may jeopardize eligibility for receiving future DOC awards.

- c. Some DOC programs have specific audit guidelines that will be incorporated into the award. When DOC does not have a program-specific audit guide available for the program, the auditor will follow the requirements for a program-specific audit as described in 2 C.F.R. § 200.507 ("Program-specific audits"). The non-Federal entity may include a line item in the budget for the cost of the audit for approval. A copy of the program-specific audit shall be submitted to the Grants Officer.
- d. Non-Federal entities are responsible for compliance with the above audit requirements and for informing the Grants Officer of the status of their audit, including when the relevant audit has been completed and submitted in accordance with the requirements of this section. In accordance with 2 C.F.R. § 200.331(d)(3), pass-through entities are responsible for issuing a management decision for any audit findings pertaining to the Federal award provided to a subrecipient.

.02 Audit Resolution Process

- a. An audit of the award may result in the disallowance of costs incurred by the non-Federal entity and the establishment of a debt (account receivable) due DOC. For this reason, the non-Federal entity should take seriously its responsibility to respond to all audit findings and

recommendations with adequate explanations and supporting evidence whenever audit results are disputed.

- b. In accordance with the *Federal Register* notice dated January 27, 1989 (54 FR 4053), a non-Federal entity whose award is audited has the following opportunities to dispute the proposed disallowance of costs and the establishment of a debt:
 1. The non-Federal entity has 30 days from the date of the transmittal of the draft audit report to submit written comments and documentary evidence.
 2. The non-Federal entity has 30 days from the date of the transmittal of the final audit report to submit written comments and documentary evidence. There will be no extension of this deadline.
 3. The DOC shall review the documentary evidence submitted by the non-Federal entity and shall notify the non-Federal entity of the results in an *Audit Resolution Determination Letter*. The non-Federal entity has 30 days from the date of receipt of the *Audit Resolution Determination Letter* to submit a written appeal, unless this deadline is extended in writing by the DOC. The appeal is the last opportunity for the non-Federal entity to submit written comments and documentary evidence to the DOC to dispute the validity of the audit resolution determination.
 4. An appeal of the Audit Resolution Determination does not prevent the establishment of the audit-related debt nor does it prevent the accrual of interest on the debt. If the Audit Resolution Determination is overruled or modified on appeal, appropriate corrective action will be taken retroactively. An appeal will stay the offset of funds owed by the auditee against funds due to the auditee.
 5. The DOC shall review the non-Federal entity's appeal and notify the non-Federal entity of the results in an *Appeal Determination Letter*. After the opportunity to appeal has expired or after the appeal determination has been rendered, DOC will not accept any further documentary evidence from the non-Federal entity. No other administrative appeals are available in DOC.

G. DEBTS

.01 Payment of Debts Owed the Federal Government

- a. The non-Federal entity must promptly pay any debts determined to be owed the Federal Government. Any funds paid to the non-Federal entity in excess of the amount to which the non-Federal entity is finally determined to be entitled under the terms of the Federal award constitute a debt to the Federal government. In accordance with 2 C.F.R. § 200.345 ("Collection of amounts due"), if not paid within 90 calendar days after demand, DOC may reduce a debt owed to the Federal Government by:

1. Making an administrative offset against other requests for reimbursement;
 2. Withholding advance payments otherwise due to the non-Federal entity; or
 3. Taking any other action permitted by Federal statute.
- b. DOC debt collection procedures are set out in 15 C.F.R. Part 19. In accordance with 2 C.F.R. § 200.345 and 31 U.S.C. § 3717, failure to pay a debt owed to the Federal Government shall result in the assessment of interest, penalties and administrative costs in accordance with the provisions of 31 U.S.C. § 3717 and 31 C.F.R. § 901.9. Commerce entities will transfer any Commerce debt that is more than 180 days delinquent to the U.S. Department of the Treasury's Financial Management Service for debt collection services, a process known as "cross-servicing," pursuant to 31 U.S.C. § 3711(g), 31 C.F.R. § 285.12, and 15 C.F.R. § 19.9, and may result in DOC taking further action as specified in DOC ST&C A.06 "Non-Compliance With Award Provisions." Funds for payment of a debt must not come from other Federally-sponsored programs, and the DOC may conduct on-site visits, audits, and other reviews to verify that other Federal funds have not been used to pay a debt.

.02 Late Payment Charges

- a. Interest shall be assessed on the delinquent debt in accordance with section 3717(a) of the Debt Collection Act of 1982, as amended (31 U.S.C. §§ 3701 *et seq.*). The minimum annual interest rate to be assessed is the U.S. Department of the Treasury's Current Value of Funds Rate (CVFR). The CVFR is available online at <http://www.fms.treas.gov/cvfr/index.html> and also published by the Department of the Treasury in the *Federal Register* (<http://www.gpo.gov/fdsys/browse/collection.action?collectionCode=FR>) and in the *Treasury Financial Manual Bulletin*. The assessed rate shall remain fixed for the duration of the indebtedness.
- b. Penalties shall accrue at a rate of not more than six percent per year or such other higher rate as authorized by law.
- c. Administrative charges, i.e., the costs of processing and handling a delinquent debt, shall be determined by the Commerce entity collecting the debt, as directed by the Office of the Chief Financial Officer and Assistant Secretary for Administration.

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

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

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

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

H. GOVERNMENTWIDE DEBARMENT AND SUSPENSION

The non-Federal entity shall comply with the provisions of 2 C.F.R. Part 1326, "Nonprocurement Debarment and Suspension" (published in the *Federal Register* on December 21, 2006, 71 FR 76573), which generally prohibit entities that have been debarred, suspended, or voluntarily excluded from participating in Federal nonprocurement transactions either through primary or lower tier covered transactions, and which sets forth the responsibilities of recipients of Federal financial assistance regarding transactions with other persons, including subrecipients and contractors.

I. LOBBYING RESTRICTIONS

.01 Statutory Provisions

Non-Federal entities shall comply with 2 C.F.R. § 200.450 ("Lobbying"), which incorporates the provisions of 31 U.S.C. § 1352; the "New Restrictions on Lobbying" published at 55 FR 6736 (February 26, 1990); and OMB guidance and notices on lobbying restrictions. In addition, non-Federal entities must comply with the DOC regulations published at 15 C.F.R. Part 28, which implement the "New Restrictions on Lobbying". These provisions prohibit the use of Federal funds for lobbying the executive or legislative branches of the Federal Government in connection with the award, and require the disclosure of the use of non-Federal funds for lobbying. Lobbying includes attempting to improperly influence, meaning any influence that induces or tends to induce a Federal employee or officer to give consideration or to act regarding a Federal award or regulatory matter on any basis other than the merits of the matter, either directly or indirectly. Costs incurred on to improperly influence are unallowable. *See* 2 C.F.R. § 200.450(b) and (c).

.02 Disclosure of Lobbying Activities

Any non-Federal entity that receives more than \$100,000 in Federal funding shall submit a completed Form SF-LLL, "Disclosure of Lobbying Activities," regarding the use of non-Federal funds for lobbying. The Form SF-LLL shall be submitted within 30 days following the end of the calendar quarter in which there occurs any event that requires disclosure or that materially affects

the accuracy of the information contained in any disclosure form previously filed. The non-Federal entity must submit any required Forms SF-LLL, including those received from subrecipients, contractors, and subcontractors, to the Grants Officer.

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

.01 Conflicts of Interest and Codes of Conduct

- a. General conflicts of interest requirements. In accordance with 2 C.F.R. § 200.112 (“Conflicts of interest”), each non-Federal entity must comply with the conflicts of interest policy provided by the Grants Officer. Any non-Federal entity must disclose in writing any potential conflicts of interest to the DOC or pass-through entity. In addition, pursuant to the certification in Form SF-424B, paragraph 3 and Form SF-424D, paragraph 7, as applicable, the recipient must maintain written standards of conduct to establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain in the administration of an award.
- b. Procurement-related conflicts of interest. In addition, in accordance with 2 C.F.R. § 200.318 (“General procurement standards”), non-Federal entities must maintain written standards of conduct covering conflicts of interest and governing the performance of their employees engaged in the selection, award and administration of contracts. *See* Section E. of these DOC ST&Cs entitled “Procurement Standards.”

.02 Applicability of Award Provisions to Subrecipients

- a. The recipient or pass-through entity shall require all subrecipients, including lower tier subrecipients, under the award to comply with the provisions of the award, including applicable provisions of the OMB Uniform Guidance (2 C.F.R. Part 200), and all associated terms and conditions. *See* 2 C.F.R. §§ 200.330 (“Subrecipient and contractor determinations”) through 200.332, (“Subrecipient Monitoring and Management”) and 2 C.F.R. § 200.101(b)(1) (“Applicability”), which describes the applicability of 2 C.F.R. Part 200 to various types of Federal awards.
- b. In accordance with 2 C.F.R. § 200.331 (“Requirements for pass-through entities”), all pass-through entities must:
 1. Subaward identification. Clearly identify every subaward to the subrecipient at the time of the subaward, including changes in subsequent subaward modification. In accordance with 2 C.F.R. § 200.331(a), required information includes:
 - i. All Federal Award Information data elements set out at 2 C.F.R. § 200.331(a)(1);

- ii. All requirements imposed by the pass-through entity on the subrecipient so that the Federal award is used in accordance with Federal statutes, regulations and the terms and conditions of the Federal award;
 - iii. Any additional requirements that the pass-through entity imposes on the subrecipient in order for the pass-through entity to meet its own responsibility to the Federal awarding agency, including identification of required financial and performance reports;
 - iv. Indirect cost rate information in accordance with 2 C.F.R. § 200.331(a)(4);
 - v. Access requirements to the subrecipient's records and financial statements in accordance with 2 C.F.R. § 200.331(a)(5); and
 - vi. Appropriate terms and conditions concerning closeout of the subaward.
2. Risk-Based Subrecipient Evaluations. Evaluate each subrecipient's risk of noncompliance with Federal statutes, regulations, and the terms and conditions of the subaward for purposes of determining the appropriate subrecipient monitoring in accordance with 2 C.F.R. § 200.331(b).
 3. Subaward conditions. Consider imposing specific subaward conditions upon a subrecipient if appropriate as described in 2 C.F.R. § 200.207 ("Specific conditions").
 4. Subrecipient Monitoring. In accordance with 2 C.F.R. § 200.331(d), monitor the activities of the subrecipient as necessary to ensure that the subaward is used for authorized purposes, in compliance with Federal requirements; and that the subaward performance goals are achieved. Subrecipient monitoring must include:
 - i. Reviewing financial and programmatic reports required by the pass-through entity;
 - ii. Following-up and ensuring that the subrecipient takes timely and appropriate action on all deficiencies pertaining to the Federal award provided to the subrecipient from the pass-through entity detected through audits, on-site reviews, and other means; and
 - iii. Issuing a management decision for audit findings pertaining to the Federal award provided to the subrecipient from the pass-through entity as required by 2 C.F.R. § 200.521 ("Management decision").
 5. Utilizing Risk-Based Monitoring Tools. In accordance with 2 C.F.R. § 200.331(e), depending on the recipient's evaluation of each subrecipient's risk, utilize appropriate monitoring tools, including training and technical assistance, performing on-site reviews, and arranging agreed-upon-procedures engagements as described in 2 C.F.R. § 200.425 ("Audit Services").

6. Subrecipient Audits. Verify that every subrecipient is audited as required by 2 C.F.R. Part 200, Subpart F “Audit requirements” when it is expected that the subrecipient’s Federal awards expended during the respective fiscal year equaled or exceeded the threshold set forth in 2 C.F.R. § 200.501 (“Audit requirements”).
7. Necessary adjustments to the pass-through entity’s records. Consider whether the results of the subrecipient’s audits, on-site reviews, or other monitoring indicate conditions that necessitate adjustments to the pass-through entity’s own records.
8. Enforcement action. Considering taking enforcement action against noncompliant subrecipients as described in 2 C.F.R. § 200.338 and in applicable program regulations.

See also 2 C.F.R. § 200.331 for the full text of requirements for pass-through entities.

.03 Competition and Codes of Conduct for Subawards

- a. The non-Federal entity must be alert to organizational conflicts of interest as well as other practices among subrecipients that may restrict or eliminate competition.
- b. The non-Federal entity shall maintain written standards of conduct covering conflicts of interest and governing the performance of its employees engaged in the selection, award, and administration of subawards. No employee, officer, or agent shall participate in the selection, award, or administration of a subaward supported by Federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization in which he/she serves as an officer or which employs or is about to employ any of the parties mentioned in this section, has a financial interest or other interest in the organization selected or to be selected for a subaward. The officers, employees, and agents of the non-Federal entity shall neither solicit nor accept anything of monetary value from subrecipients. However, the non-Federal entity may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct shall provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the recipient.
- c. A financial interest may include employment, stock ownership, a creditor or debtor relationship, or prospective employment with the organization selected or to be selected for a subaward. An appearance of impairment of objectivity could result from an organizational conflict where, because of other activities or relationships with other persons or entities, a person is unable or potentially unable to render impartial assistance or advice. It could also result from non-financial gain to the individual, such as benefit to reputation or prestige in a professional field.

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

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

Applicants/bidders for a lower tier covered transaction (except procurement contracts for goods and services under \$25,000 not requiring the consent of a DOC official) are subject to Subpart C of 2 C.F.R. Part 180, “OMB Guidelines to Agencies on Government-wide Debarment and Suspension (Nonprocurement).” In addition, applicants/bidders for a lower tier covered transaction for a subaward, contract, or subcontract greater than \$100,000 of Federal funds at any tier are subject to 15 C.F.R. Part 28, “New Restrictions on Lobbying.” Applicants/bidders should familiarize themselves with these provisions, including the certification requirement. Therefore, applications for a lower tier covered transaction must include a Form CD-512, “Certification Regarding Lobbying--Lower Tier Covered Transactions,” completed without modification.

- b. The non-Federal entity shall include a term or condition in all lower tier covered transactions (subawards, contracts, and subcontracts), that the award is subject to Subpart C of 2 C.F.R. Part 180, “OMB Guidelines to Agencies on Government-wide Debarment and Suspension (Nonprocurement).”

- c. Required subaward and contractual provisions.

1. The non-Federal entity shall include a statement in all lower tier covered transactions (subawards, contracts, and subcontracts) exceeding \$100,000 in Federal funds, that the subaward, contract, or subcontract is subject to 31 U.S.C § 1352, as implemented at 15 C.F.R. Part 28, “New Restrictions on Lobbying.” The non-Federal entity shall further require the subrecipient, contractor, or subcontractor to submit a completed “Disclosure of Lobbying Activities” (Form SF-LLL) regarding the use of non-Federal funds for lobbying. The Form SF-LLL shall be submitted within 15 days following the end of the calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed. The Form SF-LLL shall be submitted from tier to tier until received by the recipient. The recipient must submit all disclosure forms received, including those that report lobbying activity on its own behalf, to the Grants Officer within 30 days following the end of the calendar quarter.
2. In addition to other provisions required by the Federal agency or non-Federal entity, in accordance with 2 C.F.R. § 200.326 (“Contract provisions”), all contracts made by the non-Federal entity under the Federal award must contain the applicable provisions set out at 2 C.F.R. Part 200, Appendix II, “Contract Provisions for Non-Federal Entity Contracts Under Federal Awards”, which address various contractual requirements including remedies, termination for cause and convenience, Equal Employment Opportunity, the

Davis-Bacon Act, the Contract Work Hours and Safety Standards Act, rights to inventions, environmental quality, energy efficiency, debarment and suspension, the Byrd Anti-Lobbying Amendment, and procurement of recovered materials. *See* Appendix II to 2 C.F.R. Part 200 for a full explanation of these requirements.

.05 Pilot Program for Enhancement of Employee Whistleblower Protections

The National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2013 (Pub. L. No. 112-239, enacted January 2, 2013 and codified at 41 U.S.C. § 4712) includes a pilot program of whistleblower protection. It applies to all DOC awards, subawards, or contracts under awards issued beginning July 1, 2013 through January 1, 2017. The following term implements that law:

In accordance with 41 U.S.C. § 4712, an employee of a non-Federal entity or contractor under a Federal award or subaward may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a person or body information that the employee reasonably believes is evidence of gross mismanagement of a Federal award, subaward, or a contract under a Federal award or subaward, a gross waste of Federal funds, an abuse of authority relating to a Federal award or subaward or contract under a Federal award or subaward, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a Federal award, subaward, or contract under a Federal award or subaward. These persons or bodies include:

- a. A Member of Congress or a representative of a committee of Congress.
- b. An Inspector General.
- c. The Government Accountability Office.
- d. A Federal employee responsible for contract or grant oversight or management at the relevant agency.
- e. An authorized official of the Department of Justice or other law enforcement agency.
- f. A court or grand jury.
- g. A management official or other employee of the contractor, subcontractor, or grantee who has the responsibility to investigate, discover, or address misconduct.

Non-Federal entities and contractors under Federal awards and subawards shall inform their employees in writing of the rights and remedies provided under 41 U.S.C. § 4712, in the predominant native language of the workforce.

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

In accordance with 2 C.F.R. § 200.321 (“Contracting with small and minority businesses, women’s business enterprises, and labor surplus area firms”), the non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women’s business enterprises, and labor surplus areas firms are used when possible. DOC encourages non-Federal entities to

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

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

.07 Subaward and/or Contract to a Federal Agency

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

K. NATIONAL POLICY REQUIREMENTS

.01 Non-Discrimination Requirements

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

a. Statutory Provisions

1. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d *et seq.*) and DOC implementing regulations published at 15 C.F.R. Part 8 prohibiting discrimination on the grounds of race, color, or national origin under programs or activities receiving Federal financial assistance;

2. Title IX of the Education Amendments of 1972 (20 U.S.C. §§ 1681 *et seq.*) prohibiting discrimination on the basis of sex under Federally assisted education programs or activities;
3. 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;
4. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), and DOC implementing regulations published at 15 C.F.R. Part 8b prohibiting discrimination on the basis of handicap under any program or activity receiving or benefiting from Federal assistance.

For purposes of complying with the accessibility standards set forth in 15 C.F.R. § 8b.18(c), non-federal entities must adhere to the regulations, published by the U.S. Department of Justice, implementing Title II of the Americans with Disabilities Act (ADA) (28 C.F.R. part 35; 75 FR 56164, as amended by 76 FR 13285) and Title III of the ADA (28 C.F.R. part 36; 75 FR 56164, as amended by 76 FR 13286). The revised regulations adopted new enforceable accessibility standards called the “2010 ADA Standards for Accessible Design” (2010 Standards), which replace and supersede the former Uniform Federal Accessibility Standards for new construction and alteration projects.

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

b. Other Provisions

1. Parts II and III of E.O. 11246, “Equal Employment Opportunity,” (30 FR 12319, 1965),³ which requires Federally assisted construction contracts to include the nondiscrimination provisions of §§ 202 and 203 of E.O. 11246 and Department of Labor regulations implementing E.O. 11246 (41 C.F.R. § 60-1.4(b), 1991).
2. E.O. 13166 (65 FR 50121, 2000), “Improving Access to Services for Persons With Limited English Proficiency,” requiring Federal agencies to examine the services provided, identify any need for services to those with limited English proficiency (LEP), and develop and implement a system to provide those services so LEP persons can have

³ As amended by E.O. 11375 (32 FR 14303, 1967) and E.O. 12086 (43 FR 46501, 1978).

meaningful access to them. The DOC issued policy guidance on March 24, 2003 (68 FR 14180) to articulate the Title VI prohibition against national origin discrimination affecting LEP persons and to help ensure that non-Federal entities provide meaningful access to their LEP applicants and beneficiaries.

c. Title VII Exemption for Religious Organizations

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

.02 Environmental Requirements

Environmental impacts must be considered by Federal decision makers in their decisions whether or not to approve: (1) a proposal for Federal assistance; (2) the proposal with mitigation; or (3) a different proposal having less adverse environmental impacts. Federal environmental laws require that the funding agency initiate an early planning process that considers potential impacts that projects funded with Federal assistance may have on the environment. Each non-Federal entity must comply with all environmental standards, to include those prescribed under the following statutes and E.O.s, and shall identify to the awarding agency any impact the award may have on the environment. In some cases, award funds can be withheld by the Grants Officer under a special award condition requiring the non-Federal entity to submit additional environmental compliance information sufficient to enable the DOC to make an assessment on any impacts that a project may have on the environment.

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

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

withheld by the Grants Officer under a special award condition requiring the non-Federal entity to submit the appropriate NEPA documentation sufficient to enable DOC to make an assessment on any impacts that a project may have on the environment.

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

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

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

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

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

Non-Federal entities must comply with the provisions of the Clean Air Act (42 U.S.C. §§ 7401 *et seq.*), Clean Water Act (33 U.S.C. §§ 1251 *et seq.*), and E.O. 11738 (38 FR 25161, 1973), and shall not use a facility on the Environmental Protection Agency’s (EPA) List of Violating Facilities (this list is incorporated into the Excluded Parties List System located at <https://www.sam.gov/portal/public/SAM/>) in performing any award that is nonexempt under 2 C.F.R. § 1532, and shall notify the Program Officer in writing if it intends to use a facility that is on the EPA List of Violating Facilities or knows that the facility has been recommended to be placed on the List.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

l. The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, commonly known as Superfund) (42 U.S.C. §§ 9601 *et seq.*) and the Community Environmental Response Facilitation Act (42 U.S.C. § 9601 *note et seq.*)

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

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

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

.03 OTHER NATIONAL POLICY REQUIREMENTS

a. Criminal and Prohibited Activities

1. The Program Fraud Civil Remedies Act (31 U.S.C. § 3801 *et seq.*), provides for the imposition of civil penalties against persons who make false, fictitious, or fraudulent claims to the Federal Government for money (including money representing grants, loans, or other benefits).
2. The False Claims Amendments Act of 1986 and the False Statements Accountability Act of 1996 (18 U.S.C. §§ 287 and 1001, respectively), provide that whoever makes or presents any false, fictitious, or fraudulent statement, representation, or claim against the United States shall be subject to imprisonment of not more than five years and shall be subject to a fine in the amount provided by 18 U.S.C. § 287.
3. The Civil False Claims Act (31 U.S.C. §§ 3729 - 3733), provides that suits can be brought by the government, or a person on behalf of the government, for false claims made under Federal assistance programs.
4. The Copeland “Anti-Kickback” Act (18 U.S.C. § 874), prohibits a person or organization engaged in a Federally supported project from enticing an employee working on the project from giving up a part of his compensation under an employment contract. The Copeland “Anti-Kickback” Act also applies to contractors and subcontractors pursuant to 40 U.S.C. § 3145.

b. Drug-Free Workplace

The non-Federal entity shall comply with the provisions of the Drug-Free Workplace Act of 1988 (41 U.S.C. § 8102) and DOC implementing regulations published at 15 C.F.R. Part 29 “Government wide Requirements for Drug-Free Workplace (Financial Assistance),” which require that the non-Federal entity take steps to provide a drug-free workplace.

c. Foreign Travel

1. Each non-Federal entity shall comply with the provisions of the Fly America Act (49 U.S.C. § 40118). The implementing regulations of the Fly America Act are found at 41 C.F.R. §§ 301-10.131 through 301-10.143.

2. The Fly America Act requires that Federal travelers and others performing U.S. Government-financed air travel must use U.S. flag air carriers, to the extent that service by such carriers is available. Foreign air carriers may be used only in specific instances, such as when a U.S. flag air carrier is unavailable, or use of U.S. flag air carrier service will not accomplish the agency's mission.
3. One exception to the requirement to fly U.S. flag carriers is transportation provided under a bilateral or multilateral air transport agreement, to which the United States Government and the government of a foreign country are parties, and which the Department of Transportation has determined meets the requirements of the Fly America Act pursuant to 49 U.S.C. § 40118(b). The United States Government has entered into bilateral/multilateral "Open Skies Agreements" (U.S. Government Procured Transportation) that allow federal funded transportation services for travel and cargo movements to use foreign air carriers under certain circumstances. There are multiple "Open Skies Agreements" currently in effect. For more information about the current bilateral and multilateral agreements, visit the GSA website <http://www.gsa.gov/portal/content/103191>. Information on the Open Skies agreements (U.S. Government Procured Transportation) and other specific country agreements may be accessed via the Department of State's website <http://www.state.gov/e/eeb/tra/>.
4. If a foreign air carrier is anticipated to be used for any portion of travel under a DOC financial assistance award the non-Federal entity must receive prior approval from the Grants Officer. When requesting such approval, the non-Federal entity must provide a justification in accordance with guidance provided by 41 C.F.R. § 301-10.142, which requires the non-Federal entity to provide the Grants Officer with the following: name; dates of travel; origin and destination of travel; detailed itinerary of travel; name of the air carrier and flight number for each leg of the trip; and a statement explaining why the non-Federal entity meets one of the exceptions to the regulations. If the use of a foreign air carrier is pursuant to a bilateral agreement, the non-Federal entity must provide the Grants Officer with a copy of the agreement or a citation to the official agreement available on the GSA website. The Grants Officer shall make the final determination and notify the non-Federal entity in writing. Failure to adhere to the provisions of the Fly America Act will result in the non-Federal entity not being reimbursed for any transportation costs for which any non-Federal entity improperly used a foreign air carrier.

d. Increasing Seat Belt Use in the United States

Pursuant to E.O. 13043 (62 FR 19217, 1997), non-Federal entities should encourage employees and contractors to enforce on-the-job seat belt policies and programs when operating company-owned, rented, or personally owned vehicles.

e. Research Involving Human Subjects

1. All proposed research involving human subjects must be conducted in accordance with 15 C.F.R. Part 27, “Protection of Human Subjects.” No research involving human subjects is permitted under this award unless expressly authorized by special award condition, or otherwise in writing by the Grants Officer.
2. Federal policy defines a human subject as a living individual about whom an investigator conducting research obtains (1) data through intervention or interaction with the individual, or (2) identifiable private information. Research means a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge.
3. DOC regulations at 15 C.F.R. Part 27 require that non-Federal entities maintain appropriate policies and procedures for the protection of human subjects. In the event it becomes evident that human subjects may be involved in this project, the non-Federal entity shall submit appropriate documentation to the Federal Program Officer for approval by the appropriate DOC officials. This documentation may include:
 - i. Documentation establishing approval of the project by an Institutional Review Board (IRB) approved for Federal-wide use under Department of Health and Human Services guidelines (*see also* 15 C.F.R. § 27.103);
 - ii. Documentation to support an exemption for the project under 15 C.F.R. § 27.101(b);
or
 - iii. Documentation of IRB approval of any modification to a prior approved protocol or to an informed consent form.
4. No work involving human subjects may be undertaken, conducted, or costs incurred and/or charged for human subjects research, until the appropriate documentation is approved in writing by the Grants Officer. In accordance with 15 C.F.R. § 27.118, if research involving human subjects is proposed after an award is made, the non-Federal entity must contact the Federal Program Officer and provide required documentation. Notwithstanding this prohibition, work may be initiated or costs incurred and/or charged to the project for protocol or instrument development related to human subjects research.

f. Federal Employee Expenses

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

including travel payments for Federal employees, from non-Federal entities or applicants regardless of the source.

g. Minority Serving Institutions Initiative

Pursuant to E.O.s 13555 (“White House Initiative on Educational Excellence for Hispanics”) (75 FR 65417, 2010), 13592 (“Improving American Indian and Alaska Native Educational Opportunities and Strengthening Tribal Colleges and Universities”) (76 FR 76603, 2011) , and 13532 (“Promoting Excellence, Innovation, and Sustainability at Historically Black Colleges and Universities”) (75 FR 9749, 2010), DOC is strongly committed to broadening the participation of minority serving institutions (MSIs) in its financial assistance programs. DOC’s goals include achieving full participation of MSIs in order to advance the development of human potential, strengthen the Nation’s capacity to provide high-quality education, and increase opportunities for MSIs to participate in and benefit from Federal financial assistance programs. DOC encourages all applicants and non-Federal entities to include meaningful participation of MSIs. Institutions eligible to be considered MSIs are listed on the Department of Education website.

h. Research Misconduct

The DOC adopts, and applies to financial assistance awards for research, the “Federal Policy on Research Misconduct” (Federal Policy) issued by the Executive Office of the President’s Office of Science and Technology Policy on December 6, 2000 (65 FR 76260). As provided for in the Federal Policy, research misconduct refers to the fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results. Research misconduct does not include honest errors or differences of opinion. Non-Federal entities that conduct extramural research funded by DOC must foster an atmosphere conducive to the responsible conduct of sponsored research by safeguarding against and resolving allegations of research misconduct. Non-Federal entities also have the primary responsibility to prevent, detect, and investigate allegations of research misconduct and, for this purpose, may rely on their internal policies and procedures, as appropriate, to do so. Non-Federal entities must notify the Grants Officer of any allegation that meets the definition of research misconduct and detail the entity’s inquiry to determine whether there is sufficient evidence to proceed with an investigation, as well as the results of any investigation. The DOC may take appropriate administrative or enforcement action at any time under the award, up to and including award termination and possible suspension or debarment, and referral to the Commerce OIG, the U.S. Department of Justice, or other appropriate investigative body.

i. Publications, Videos, and Acknowledgment of Sponsorship

1. Publication of results or findings in appropriate professional journals and production of video or other media is encouraged as an important method of recording, reporting and otherwise disseminating information and expanding public access to federally-funded projects (*e.g.*, scientific research).

2. Non-Federal entities may be required to submit a copy of any publication materials, including but not limited to print, recorded, or Internet materials, to the funding agency.
3. When releasing information related to a funded project, non-Federal entities must include a statement that the project or effort undertaken was or is sponsored by DOC.
4. Non-Federal entities are responsible for assuring that every publication of material based on, developed under, or otherwise produced under a DOC financial assistance award, except scientific articles or papers appearing in scientific, technical, or professional journals, contains the following disclaimer or other disclaimer approved by the Grants Officer:

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

j. Care and Use of Live Vertebrate Animals

Non-Federal entities must comply with the Laboratory Animal Welfare Act of 1966, as amended, (Pub. L. No. 89-544, 7 U.S.C. §§ 2131 *et seq.*) (animal acquisition, transport, care, handling, and use in projects), and implementing regulations (9 C.F.R. Parts 1, 2, and 3); the Endangered Species Act (16 U.S.C. §§ 1531 *et seq.*); Marine Mammal Protection Act (16 U.S.C. §§ 1361 *et seq.*) (taking possession, transport, purchase, sale, export or import of wildlife and plants); the Nonindigenous Aquatic Nuisance Prevention and Control Act (16 U.S.C. §§ 4701 *et seq.*) (ensure preventive measures are taken or that probable harm of using species is minimal if there is an escape or release); and all other applicable statutes pertaining to the care, handling, and treatment of warm-blooded animals held for research, teaching, or other activities supported by Federal financial assistance. No research involving vertebrate animals is permitted under any DOC financial assistance award unless authorized by the Grants Officer.

k. Homeland Security Presidential Directive 12

If the performance of a grant award requires non-Federal entity personnel to have routine access to Federally-controlled facilities and/or Federally-controlled information systems (for purpose of this term “routine access” is defined as more than 180 days), such personnel must undergo the personal identity verification credential process. In the case of foreign nationals, the DOC will conduct a check with U.S. Citizenship and Immigration Services’ (USCIS) Verification Division, a component of the Department of Homeland Security (DHS), to ensure the individual is in a lawful immigration status and that he or she is eligible for employment within the United States. Any items or services delivered under a financial assistance award shall comply with DOC personal identity verification procedures that implement Homeland Security Presidential Directive 12, “Policy for a Common Identification Standard for Federal Employees and Contractors”, FIPS PUB 201, and OMB Memorandum M-05-24. The non-Federal entity shall

ensure that its subrecipients and contractors (at all tiers) performing work under this award comply with the requirements contained in this term. The Grants Officer may delay final payment under an award if the subrecipient or contractor fails to comply with the requirements listed in the term below. The non-Federal entity shall insert the following term in all subawards and contracts when the subaward non-Federal entity or contractor is required to have routine physical access to a Federally-controlled facility or routine access to a Federally-controlled information system:

The subrecipient or contractor shall comply with DOC personal identity verification procedures identified in the subaward or contract that implement Homeland Security Presidential Directive 12 (HSPD-12), Office of Management and Budget (OMB) Guidance M-05-24, as amended, and Federal Information Processing Standards Publication (FIPS PUB) Number 201, as amended, for all employees under this subaward or contract who require routine physical access to a Federally-controlled facility or routine access to a Federally-controlled information system.

The subrecipient or contractor shall account for all forms of Government-provided identification issued to the subrecipient or contractor employees in connection with performance under this subaward or contract. The subrecipient or contractor shall return such identification to the issuing agency at the earliest of any of the following, unless otherwise determined by DOC: (1) When no longer needed for subaward or contract performance; (2) Upon completion of the subrecipient or contractor employee's employment; (3) Upon subaward or contract completion or termination.

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

1. This clause applies to the extent that this financial assistance award involves access to export-controlled items.
2. In performing this financial assistance award, a non-Federal entity may gain access to items subject to export control (export-controlled items) under the Export Administration Regulations (EAR). The non-Federal entity is responsible for compliance with all applicable laws and regulations regarding export-controlled items, including the EAR's deemed exports and reexports provisions. The non-Federal entity shall establish and maintain effective export compliance procedures at DOC and non-DOC facilities throughout performance of the financial assistance award. At a minimum, these export compliance procedures must include adequate controls of physical, verbal, visual, and electronic access to export-controlled items, including by foreign nationals.
3. Definitions
 - i. Export-controlled items. Items (commodities, software, or technology), that are subject to the EAR (15 C.F.R. §§ 730-774), implemented by the DOC's Bureau of Industry and Security. These are generally known as "dual-use" items, items with a military and commercial application.

- ii. Deemed Export/Reexport. The EAR defines a deemed export as a release of export-controlled items (specifically, technology or source code) to a foreign national in the U.S. Such release is “deemed” to be an export to the home country of the foreign national (*see* 15 C.F.R. § 734.2(b)(2)(ii)). A release may take the form of visual inspection, oral exchange of information, or the application abroad of knowledge or technical experience acquired in the U.S. If such a release occurs abroad, it is considered a deemed reexport to the foreign national’s home country. Licenses from DOC may be required for deemed exports or reexports.
4. The non-Federal entity shall control access to all export-controlled items that it possesses or that comes into its possession in performance of this financial assistance award, to ensure that access to, or release of, such items are restricted, or licensed, as required by applicable Federal laws, E.O.s, and/or regulations, including the EAR.
5. As applicable, non-Federal entity personnel and associates at DOC sites will be informed of any procedures to identify and protect export-controlled items.
6. To the extent the non-Federal entity wishes to provide foreign nationals with access to export-controlled items, the non-Federal entity shall be responsible for obtaining any necessary licenses, including licenses required under the EAR for deemed exports or deemed reexports.
7. Nothing in the terms of this financial assistance award is intended to change, supersede, or waive the requirements of applicable Federal laws, E.O.s or regulations.
8. Compliance with this term will not satisfy any legal obligations the non-Federal entity may have regarding items that may be subject to export controls administered by other agencies such as the Department of State, which has jurisdiction over exports of munitions items subject to the International Traffic in Arms Regulations (ITAR) (22 C.F.R. §§ 120-130), including releases of such items to foreign nationals.
9. The non-Federal entity shall include this clause, including this paragraph (i), in all lower tier transactions (subawards, contracts, and subcontracts) under this financial assistance award that may involve access to export-controlled items.

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

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

Award Term from 2 C.F.R. § 175.15(b):

Trafficking in persons.

a. Provisions applicable to a recipient that is a private entity.

1. *You as the recipient, your employees, subrecipients under this award, and subrecipients' employees may not—*
 - i. *Engage in severe forms of trafficking in persons during the period of time that the award is in effect;*
 - ii. *Procure a commercial sex act during the period of time that the award is in effect; or*
 - iii. *Use forced labor in the performance of the award or subawards under the award.*
2. *We as the Federal awarding agency may unilaterally terminate this award, without penalty, if you or a subrecipient that is a private entity —*
 - i. *Is determined to have violated a prohibition in paragraph a.1 of this award term; or*
 - ii. *Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph a.1 of this award term through conduct that is either— (A) Associated with performance under this award; or (B) Imputed to you or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 C.F.R. Part 180, “OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” as implemented by DOC at 2 C.F.R. Part 1326, “Nonprocurement Debarment and Suspension.”*

b. Provision applicable to a recipient other than a private entity. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity—

1. *Is determined to have violated an applicable prohibition in paragraph a.1 of this award term; or*
2. *Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph a.1 of this award term through conduct that is either—*
 - i. *Associated with performance under this award; or*
 - ii. *Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 C.F.R. Part 180, “OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” as implemented by DOC at 2 C.F.R. Part 1326, “Nonprocurement Debarment and Suspension.”*

c. Provisions applicable to any recipient.

1. *You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a.1 of this award term.*
2. *Our right to terminate unilaterally that is described in paragraph a.2 or b of this section:*
 - i. *Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and*
 - ii. *Is in addition to all other remedies for noncompliance that are available to us under this award.*
3. *You must include the requirements of paragraph a.1 of this award term in any subaward you make to a private entity.*

d. Definitions. For purposes of this award term:

1. *“Employee” means either:*
 - i. *An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or*
 - ii. *Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.*
2. *“Forced labor” means: labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.*
3. *“Private entity”:*
 - i. *Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 C.F.R. § 175.25;*
 - ii. *Includes: (A) A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 C.F.R. § 175.25(b); and (B) A for-profit organization.*
4. *“Severe forms of trafficking in persons,” “commercial sex act,” and “coercion” have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. § 7102).*

n. The Federal Funding Accountability and Transparency Act of 2006 (Pub. L. No. 109-282, 31 U.S.C. § 6101 note)

1. **Searchable Website Requirements.** The Federal Funding Accountability and Transparency Act of 2006 (FFATA) requires information on Federal awards (Federal financial assistance and expenditures) be made available to the public via a single, searchable website. This information is available at www.USASpending.gov. Recipients and subrecipients must include the following required data elements in their application:

- Name of entity receiving award;
- Award amount;
- Transaction type, funding agency, Catalog of Federal Domestic Assistance Number, and descriptive award title;
- Location of entity, primary location of performance (City/State/Congressional District/Country; and
- Unique identifier of entity.

See also 2 C.F.R. § 200.211 (“Public access to Federal award information”).

2. **Reporting Subawards and Executive Compensation.** Prime grant recipients awarded a new Federal grant greater than or equal to \$25,000 on or after October 1, 2010, other than those funded by the Recovery Act, are subject to FFATA subaward reporting requirements as outlined in the OMB guidance issued August 27, 2010. The prime recipient is required to file a FFATA subaward report by the end of the month following the month in which the prime recipient awards any sub-grant greater than or equal to \$25,000. *See* Pub. L. No. 109-282, as amended by section 6202(a) of Pub. L. No. 110-252 (*see* 31 U.S.C. 6101 note). The reporting requirements are located in Appendix A of 2 C.F.R. Part 170 and are available on the Government Printing Office’s (GPO’s) FDsys website: <http://www.gpo.gov/fdsys/pkg/CFR-2011-title2-vol1/pdf/CFR-2011-title2-vol1-part170-appA.pdf>.

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

Reporting Subawards and Executive Compensation

a. Reporting of first-tier subawards.

1. *Applicability. Unless you are exempt as provided in paragraph d. of this award term, you must report each action that obligates \$25,000 or more in Federal funds that does not include Recovery funds (as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111–5) for a subaward to an entity (see definitions in paragraph e. of this award term).*

2. Where and when to report.

- i. You must report each obligating action described in paragraph a.1. of this award term to <http://www.fsrs.gov>.
- ii. For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)

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

b. Reporting Total Compensation of Recipient Executives.

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

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

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

- i. As part of your registration profile at <http://www.ccr.gov>.
- ii. By the end of the month following the month in which this award is made, and annually thereafter.

c. Reporting of Total Compensation of Subrecipient Executives.

1. **Applicability and what to report.** Unless you are exempt as provided in paragraph d. of this award term, for each first-tier subrecipient under this award, you shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if—
 - i. in the subrecipient's preceding fiscal year, the subrecipient received—
 - (A) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 C.F.R. § 170.320 (and subawards); and
 - (B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and
 - ii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/excomp.htm>.)

See also 2 C.F.R. § 200.300(b).

2. **Where and when to report.** You must report subrecipient executive total compensation described in paragraph c.1. of this award term:
 - i. To the recipient.
 - ii. By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (i.e., between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.

- d. Exemptions.** If, in the previous tax year, you had gross income, from all sources, under \$300,000, you are exempt from the requirements to report: i. Subawards, and ii. The total compensation of the five most highly compensated executives of any subrecipient.

- e. Definitions.** For purposes of this award term:

1. Entity means all of the following, as defined in 2 C.F.R. Part 25:

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

- vi. *Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.*
3. Central Contractor Registration (CCR) and Universal Identifier requirements. In accordance with 2 C.F.R. Part 25, recipients must obtain a DUNS number and maintain an active registration in the CCR database. In addition, recipients must notify potential first-tier subrecipients that no entity may receive a first-tier subaward unless the entity has provided its DUNS number to the prime recipient. The requirements are located in Appendix A of 2 C.F.R. Part 25 and are available on GOP's FDsys website at: <http://www.gpo.gov/fdsys/pkg/CFR-2014-title2-vol1/pdf/CFR-2014-title2-vol1-part25.pdf>.

Award Term from Appendix A of 2 C.F.R. Part 25:

Central Contractor Registration and Universal Identifier Requirements

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

(currently 866–705–5711) or the Internet (currently at <http://fedgov.dnb.com/webform>).

3. *Entity, as it is used in this award term, means all of the following, as defined at 2 C.F.R. part 25, subpart C:*
 - a. *A Governmental organization, which is a State, local government, or Indian Tribe;*
 - b. *A foreign public entity;*
 - c. *A domestic or foreign nonprofit organization;*
 - d. *A domestic or foreign for-profit organization; and*
 - e. *A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.*
4. *Subaward:*
 - a. *This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.*
 - b. *The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. __.210 of the attachment to OMB Circular A–133, “Audits of States, Local Governments, and Non-Profit Organizations”).*
 - c. *A subaward may be provided through any legal agreement, including an agreement that you consider a contract.*
5. *Subrecipient means an entity that:*
 - a. *Receives a subaward from you under this award; and*
 - b. *Is accountable to you for the use of the Federal funds provided by the subaward.*

See also 2 C.F.R. § 200.300(b).

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

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

1. Unless there is an actual rescission of funds for specific grant obligations, non-Federal entities under Federal financial assistance awards for which funds have been obligated generally will be able to continue to perform and incur allowable expenses under the award during a funding hiatus. Non-Federal entities are advised that ongoing activities by Federal employees involved in grant administration (including payment processing) or similar operational and administrative work cannot continue when there is a funding lapse. Therefore, there may be delays, including payment processing delays, in the event of a shutdown.
2. All award actions will be delayed during a government shutdown; if it appears that a non-Federal entity's performance under a grant or cooperative agreement will require agency involvement, direction, or clearance during the period of a possible government shutdown, the Program Officer or Grants Officer, as appropriate, may attempt to provide such involvement, direction, or clearance prior to the shutdown or advise non-Federal entities that such involvement, direction, or clearance will not be forthcoming during the shutdown. Accordingly, non-Federal entities whose ability to withdraw funds is subject to prior agency approval, which in general are non-Federal entities that have been designated high risk, non-Federal entities under construction awards, or are otherwise limited to reimbursements or subject to agency review, will be able to draw funds down from the relevant Automatic Standard Application for Payment (ASAP) account only if agency approval is given and coded into ASAP prior to any government shutdown or closure. This limitation may not be lifted during a government shutdown. Non-Federal entities should plan to work with the Grants Officer to request prior approvals in advance of a shutdown wherever possible. Non-Federal entities whose authority to draw down award funds is restricted may decide to suspend work until the government reopens.
3. The ASAP system should remain operational during a government shutdown. Non-Federal entities that do not require any Grants Officer or agency approval to draw down advance funds from their ASAP accounts should be able to do so during a shutdown. The 30-day limitation on the drawdown of advance funds will still apply notwithstanding a government shutdown and advanced funds held for more than 30 days will have to be returned with interest.