

DEPARTMENT OF COMMERCE  
GRANTS AND COOPERATIVE AGREEMENTS  
INTERIM MANUAL

Contents

	Page
1. PREFACE .....	1
2. INTRODUCTION	
A. Purpose. ....	1
B. Authority. ....	1
C. Coverage. ....	1
D. Effect on Other Issuances. ....	1
E. Government-Wide Documents Used in the Administration of DOC Awards. ...	1
1. Administrative Requirements. ....	2
2. Cost Principles. ....	2
3. Other Requirements. ....	2
3. GLOSSARY OF TERMS AND ACRONYMS	
4. RESPONSIBILITIES IN GRANTS ADMINISTRATION	
A. Chief Financial Officer and Assistant Secretary for Administration. ....	1
B. Office of Executive Budgeting and Assistance Management .....	1
C. Office of General Counsel .....	3
D. Office of Inspector General .....	6
E. Financial, Budgeting, and Accounting Responsibilities .....	7
F. Grants Management Responsibilities .....	8
G. Liaison Responsibilities .....	12
H. Programmatic Responsibilities .....	13
I. Property Management Responsibilities. ....	16
5. RELATIONSHIPS WITH OUTSIDE ENTITIES	
A. Overview .....	1
B. Grants. ....	1
C. Cooperative Agreements. ....	1
D. Procurement Contracts. ....	3

	Page
E. Other Types of Agreements. . . . .	3
1. Cooperative Research and Development Agreement . . . . .	3
2. Economy Act Agreement. . . . .	3
3. Joint Project Agreement . . . . .	4
4. Fellowship . . . . .	4
 6. TYPES OF FINANCIAL ASSISTANCE FUNDS AND AWARDS	
 A. Discretionary Funds. . . . .	1
1. Competitive Awards. . . . .	1
2. Institutional Awards. . . . .	1
3. Noncompetitive Awards. . . . .	2
B. Nondiscretionary Funds. . . . .	2
1. Awards Mandated by Statute. . . . .	2
2. Awards Limited by Statute. . . . .	2
 7. TYPES OF APPLICATIONS	
 A. Preapplications. . . . .	1
B. Competitive Applications . . . . .	1
1. New Competitive Awards. . . . .	1
2. Amendments for Renewals. . . . .	1
C. Noncompetitive Applications. . . . .	2
1. New Noncompetitive Awards. . . . .	2
2. New Awards Mandated or Limited by Statute. . . . .	2
3. Amendments for Renewals. . . . .	2
4. Amendments for Continuations. . . . .	2
5. Extension Amendments at No Additional Cost to the Government. . . . .	2
D. Supplemental Applications . . . . .	3
1. Amendments for Administrative Increases to Meet Institution-wide Increased Costs. . . . .	3
2. Amendments for Expansion of a Project or Cost Overrun. . . . .	3
 8. MERIT REVIEW, SELECTION, APPROVAL, AND NOTIFICATION PROCEDURES	
 A. Overview. . . . .	1
B. Review Standards. . . . .	1
1. Nondiscretionary Awards. . . . .	1
2. Discretionary Awards. . . . .	1
3. Applications. . . . .	1
4. Reviewers of Applications. . . . .	2
5. Review Groups/Panels. . . . .	3

C.	Evaluation and Selection Requirements for Competition. . . . .	3
1.	Group Competition. . . . .	4
2.	Individual Qualification. . . . .	4
D.	Review Process for Applications for Competitive Awards. . . . .	5
1.	<i>Federal Register</i> Notice. . . . .	5
2.	Program Office Review. . . . .	5
3.	Grants Office Review. . . . .	5
4.	OGC Review. . . . .	5
5.	OIG Review. . . . .	5
E.	Review Process for Applications for Institutional Awards. . . . .	6
1.	New Recipients. . . . .	6
2.	Future Awards. . . . .	6
3.	Periodic Reviews. . . . .	6
F.	Review Process for Applications for Noncompetitive Awards Made with Discretionary Funds. . . . .	6
1.	Program Office Review. . . . .	6
2.	Grants Office Review. . . . .	7
3.	OGC Review. . . . .	7
4.	OIG Review. . . . .	7
G.	Review Process for Applications for Awards Mandated or Limited by Statute. . .	8
1.	Notice. . . . .	8
2.	Program Office Review. . . . .	8
3.	Grants Office Review. . . . .	8
4.	OGC Review. . . . .	8
5.	OIG Review. . . . .	8
H.	Congressional Notification. . . . .	8
I.	Obligation of Funds. . . . .	9
J.	Notice to Applicants. . . . .	9
1.	Successful Applicants. . . . .	9
2.	Unsuccessful Applicants. . . . .	9
9.	PRE-AWARD ADMINISTRATIVE REQUIREMENTS	
A.	Application Kits. . . . .	1
B.	Recommendation for Funding. . . . .	2
C.	Budget Analysis. . . . .	2
D.	Costs. . . . .	3
1.	Cost Sharing or Matching Funds. . . . .	3
2.	Direct Costs. . . . .	3
3.	Federal Employee Expenses. . . . .	4
4.	Indirect Cost Rates. . . . .	4
5.	Pre-Award Costs. . . . .	4

	Page
6. Profit or Fee. ....	4
7. Program Income. ....	5
E. "Intergovernmental Review of Federal Programs," Executive Order 12372. ....	5
F. Applicant s Management and Financial Capabilities. ....	5
1. Credit Checks. ....	6
2. Delinquent Federal Debts. ....	6
3. Name Check Reviews. ....	6
4. List of Parties Excluded from Procurement and Non-Procurement Programs. ....	6
5. Past Performance. ....	6
6. Pre-Award Accounting System Surveys. ....	7
G. High-Risk Recipients. ....	7
H. Awards to Insular Areas ....	9
I. Preparation of Financial Assistance Award. ....	9
1. Uniform Administrative Requirements. ....	9
2. Cost Principles. ....	10
3. Award Document. ....	10
 10. POST-AWARD ADMINISTRATION REQUIREMENTS	
A. Official Award File. ....	1
B. Federal Assistance Awards Data System (FAADS). ....	3
C. Costs Under DOC Awards. ....	3
D. Amendments. ....	3
E. Project Monitoring. ....	4
F. Recipient Responsibilities. ....	4
 11. ENFORCEMENT	
A. Overview. ....	1
B. Enforcement. ....	1
1. High-Risk Special Award Conditions ....	1
2. Suspension of Payments ....	2
3. Suspension of Award. ....	2
4. Termination for Cause. ....	2
5. Termination for Convenience. ....	3
6. Debarment and Suspension of a Recipient. ....	3
 12. AWARD CLOSE-OUT	
A. Responsibilities. ....	1
B. Unobligated Funds. ....	1

	Page
C. Deobligation of Funds. . . . .	1
D. Retention of Records. . . . .	2
 13. AUDITS	
A. Audit Requirements . . . . .	1
1. Organization-Wide Audits. . . . .	1
2. Program-Specific Audits. . . . .	1
3. Submission of Audit Report and Data Collection Form. . . . .	1
B. Other Audits. . . . .	2
C. OIG Access to Recipient Records. . . . .	3
D. Audit Resolution. . . . .	3
E. Audit Implementation. . . . .	4
 14. DEBT MANAGEMENT	
A. Establishment of a Debt. . . . .	1
B. Delinquent Federal Debts. . . . .	1
C. Debt Collection. . . . .	1
D. Exceptions . . . . .	3
 15. PUBLIC POLICY REQUIREMENTS	
A. Overview. . . . .	1
B. General Requirements. . . . .	1
C. Nondiscrimination Requirements . . . . .	1
D. Environmental Requirements . . . . .	2
E. Other Socioeconomic Requirements . . . . .	3
F. Requirements for Research Awards . . . . .	5
G. Requirements for Construction Awards. . . . .	6
 16. OTHER GRANTS ADMINISTRATION POLICIES AND REQUIREMENTS	
A. Anti-Deficiency Act. . . . .	1
B. Bona Fide Needs Rule. . . . .	1
C. Checklists . . . . .	1
D. Conflicts of Interest. . . . .	1
1. Federal Employees. . . . .	2
2. Review Panel Members. . . . .	2
3. Recipient Employees. . . . .	2
4. Contracts and Subawards under Grants. . . . .	2
E. Consulting Services. . . . .	3

F.	Coordination with DOC and Other Federal Agencies. . . . .	3
G.	Criminal and Prohibited Activities. . . . .	3
H.	DOC Forms. . . . .	4
I.	Federal Assistance Award Data System . . . . .	4
J.	Freedom of Information Act . . . . .	4
K.	Management and Institutional Grant Reviews. . . . .	5
	1. Management Reviews. . . . .	5
	2. Reviews of Institutional Grant Awards. . . . .	5
L.	Minimum Notice for Competitive Solicitation. . . . .	5
M.	Opportunities for Minority Business Enterprises and Women Business Enterprises. . . . .	5
N.	Order of Precedence. . . . .	5
O.	Paperwork Reduction Act - Collections of Information Conducted under Grants and Cooperative Agreements. . . . .	5
P.	Patents and Intellectual Property Rights . . . . .	6
	1. Inventions. . . . .	6
	2. Data, Databases, and Software. . . . .	7
	3. Copyright. . . . .	7
Q.	Payments. . . . .	8
R.	Privacy Act (PA). . . . .	8
S.	Recipient Name Change. . . . .	8
T.	Requests for Prior Approval. . . . .	8
U.	Scientific or Research Misconduct. . . . .	8
V.	Statutory Authority. . . . .	8
W.	Transfer of Award. . . . .	9
X.	Transfer of Funds . . . . .	10
Y.	Videos Produced under DOC Financial Assistance Awards. . . . .	10
Z.	Waivers and Deviations. . . . .	10
17.	CONSTRUCTION AWARDS (Reserved)	
18.	RESEARCH AWARDS (Reserved)	
19.	GUIDELINES FOR THE PREPARATION OF <i>FEDERAL REGISTER</i> NOTICES ANNOUNCING THE AVAILABILITY OF FINANCIAL ASSISTANCE FUNDS - REQUESTS FOR APPLICATIONS	
A.	Publication in the <i>Federal Register</i> . . . . .	1
B.	Coordination and Clearance. . . . .	2
C.	Format Requirements. . . . .	3
D.	Congressional Review of Final Rules and Interim Final Rules. . . . .	15
E.	RFA Checklist. . . . .	16

## 20. MULTI-YEAR FUNDING PROCEDURES

A.	General. . . . .	1
B.	Multi-Year Awards. . . . .	1
C.	Multi-Year Funding Principles. . . . .	1
	1. Reliability and Predictability. . . . .	1
	2. Competition. . . . .	1
	3. Request for Applications. . . . .	2
	4. Exceptions. . . . .	2
	5. No-Year Funds. . . . .	2
	6. Fixed-Year Funds. . . . .	2
	7. Amendments. . . . .	3
D.	Preparation of New Award. . . . .	3
E.	Preparation of Amendment(s). . . . .	5

## 21. GUIDELINES AND PROCEDURES FOR NAME CHECK REVIEWS

A.	Purpose. . . . .	1
B.	Authority. . . . .	1
C.	Responsibilities. . . . .	1
D.	Applicability. . . . .	1
E.	Exemptions. . . . .	2
F.	Frequency. . . . .	2
G.	DOC Financial Assistance Standard Terms and Conditions. . . . .	3
H.	The Process. . . . .	3
I.	Evaluation of Name Check Results. . . . .	4
J.	Name Check Categories. . . . .	5
K.	Grants Officer's Action on Adverse Findings. . . . .	6

## APPENDICES

A.	DOC Forms Used with Grants and Cooperative Agreements
	CD-346 - Applicant for Funding Assistance
	CD-450 - Financial Assistance Award
	CD-451 - Amendment to Financial Assistance Award
	CD-478 - Federal Assistance Information Sheet
	CD-511 - Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying
	CD-512 - Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying
	CD-571 - Reviewer Conflict of Interest and Confidentiality Certification for Non-Governmental Peer Reviewers

- B. Special Award Conditions
- C. Department of Commerce Financial Assistance Standard Terms and Conditions
- D. Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements

## EXHIBITS

Checklist of Minimum Requirements for the Preparation of *Federal Register* Notices Announcing the Availability of Financial Assistance Funds - Requests for Applications

Fly America Act Waiver Checklist

Concurrence Signature Sheet for Proposed *Federal Register* Notices Announcing Availability of Financial Assistance Funds



## 1. PREFACE

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

B. There is no general Department-wide financial assistance authority. Such authority must be provided by specific statute. The Federal Grant and Cooperative Agreement Act (31 U.S.C. 6301-6308), in and of itself, does not provide such authority. The operating unit's basic legislation must be analyzed to determine whether an assistance relationship is authorized, and if so, under what circumstances and conditions. The following operating units are authorized to provide financial assistance.

1. Economic Development Administration (EDA). The Economic Development Administration (EDA) was established under the Public Works and Economic Development Act of 1965 (42 U.S.C. 3121 *et seq.*), as amended, to generate new jobs, help retain existing jobs, and stimulate industrial and commercial growth in economically-distressed areas of the United States, as defined in 13 CFR, Chapter III. EDA assistance is available to rural and urban areas of the Nation experiencing high unemployment, low income, or sudden and severe economic distress. In fulfilling its mission, EDA is guided by the basic principle that distressed communities must be empowered to develop and implement their own economic development and revitalization strategies. Based on these locally and regionally developed priorities, EDA works in partnership with, among others, state and local governments, regional economic development districts, public and private non-profit organizations, and Indian tribes. EDA helps distressed communities address problems associated with long-term economic distress, as well as sudden and severe economic dislocations including recovering from the economic impacts of natural disasters, and closures of military installations and other Federal facilities. Under the Trade Act of 1974, as amended, EDA also administers the Trade Adjustment Assistance Program for firms and industries authorized by Title II, Chapter 3.

2. International Trade Administration (ITA). The International Trade Administration is responsible for most non-agricultural U.S. trade issues and works with the Office of the U.S. Trade Representative in coordinating U.S. trade policy. ITA operates through four principal units: Market Access and Compliance, Trade Development, Import Administration, and U.S. and Foreign Commercial Service. ITA provides grants and cooperative agreements through several programs to promote trade, investment, and commercial relations, and maintains comprehensive commercial and economic data on particular countries and regions of the world. ITA grant and

cooperative agreement programs are also intended to strengthen domestic export competitiveness, and promote U.S. industry's increased participation in international markets.

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

4. National Oceanic and Atmospheric Administration (NOAA). The National Oceanic and Atmospheric Administration studies climate and global change; ensures protection of coastal oceans and management of marine resources; provides weather services; and manages worldwide environmental data. NOAA provides financial assistance through the following organizations:

a. National Environmental Satellite, Data, and Information Service observes the environment by operating a national satellite system.

b. National Marine Fisheries Service administers programs that support the domestic and international conservation and management of living marine resources, including fisheries management and development, trade and industry assistance activities, enforcement, as well as protected species and habitat conservation operations.

c. Office of Oceanic and Atmospheric Research conducts research related to the oceans and inland waters, the lower and upper atmosphere, space environment, and the Earth.

d. National Ocean Service is the Nation's principal advocate for coastal and ocean stewardship through partnerships at all levels to support and provide the science, information, management, and leadership necessary to balance the environmental and economic well-being of the Nation's coastal resources and communities.

e. National Weather Service reports the weather of the United States and its possessions and provides weather forecasts and warnings to the general public.

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

6. Technology Administration. The Technology Administration works to maximize technology's contribution to America's economic growth by serving the needs of technology-

based industry, advocating Federal actions and policies to speed the transfer of technology from the laboratory to the marketplace, and removing barriers to commercializing new technologies by industry. The agency within the Technology Administration that is most active in providing Federal financial assistance is the National Institute of Standards and Technology (NIST). NIST provides grants and cooperative agreements to aid U.S. industry through research and services, contributes to public health and safety, supports U.S. scientific and engineering research communities, and works with state and local organizations to either establish or expand existing services for small to medium sized manufacturers. These services address critical needs in areas such as production techniques, technology applications, and business practices.

C. The DOC administers a diverse array of programs and projects concerned with the entire spectrum of business and economic development concerns as outlined above. Departmental operating units and Grants Offices are responsible for the award, administration, and monitoring of these programs under a variety of legislative authorities, governing regulations, policies, and procedures utilizing mandatory and discretionary grants and cooperative agreements. Awards are made to a wide variety of recipients, including state and local governments, for-profit or commercial organizations, non-profit organizations, and educational institutions. The administration of DOC grant and cooperative agreement programs requires adherence not only to the program objectives for which funds are awarded, but also to sound business practices, as well as laws, regulations, policies, and procedures governing grants and cooperative agreements.

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

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

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

G. Questions concerning this manual should be directed to the cognizant Grants Officer or the Director, Office of Executive Assistance Management, U.S. Department of Commerce, Room 6020, Washington, D.C. 20230, telephone number: 202-482-4115.

## 2. INTRODUCTION

**A. Purpose.** This Manual sets forth DOC guidance on grants administration and provides the Department with a uniform set of minimum procedures for soliciting, reviewing, awarding, managing and closing out of grants. The Manual references policies and procedures for use by DOC offices and operating units for ensuring the consistent implementation of legislation, regulations, Office of Management and Budget (OMB) circulars, executive orders (EOs), and Departmental policies and procedures related to financial assistance. The Manual is for internal use by DOC personnel and does not create any rights or liabilities with respect to the public or any third party.

**B. Authority.** This Manual is issued pursuant to the authority of 5 U.S.C. 301, Department Organization Order (DOO) 10-5, Chief Financial Officer and Assistant Secretary for Administration, and Department Administrative Order (DAO) 203-26, Department of Commerce Grants Administration.

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

**D. Effect on Other Issuances.** This Manual provides updated guidance to DAO 203-26, Department of Commerce Grants Administration, dated May 15, 1985, for the administration of grants, and supersedes all Financial Assistance Notices. DOC operating units may issue supplemental operating unit-specific policies and procedures to cover items not covered by the Manual to address programmatic requirements that do not conflict with the provisions of this Manual or to implement unique statutory requirements and regulations. If an operating unit has specific statutory or regulatory requirements which necessitate policies, procedures, or restrictions that are not covered by the Manual, proposed supplemental policies and procedures addressing the specific areas should be developed by the operating unit. The proposed supplement should be consistent with this Manual. The heads of operating units or other appropriate officials of the operating units are required to submit proposed supplements, and any revisions thereto, along with an assurance that they are consistent with the requirements in this Manual to the Office of Inspector General (OIG), the Office of General Counsel (OGC), and OEAM for timely review and comment prior to internal issuance and use.

**E. Government-Wide Documents Used in the Administration of DOC Awards.** A list of government-wide requirements (e.g., regulations, circulars, executive orders) which are used as appropriate in the administration of grants funded by DOC includes, but is not limited to, the following:

**1. Administrative Requirements.**

- a. 15 CFR Part 14, Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, Other Non-Profit, and Commercial Organizations
- b. 15 CFR Part 24, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments
- c. OMB Circular A-102, Grants and Cooperative Agreements with State and Local Governments
- d. OMB Circular A-110, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations

**2. Cost Principles.**

- a. OMB Circular A-21, Cost Principles for Educational Institutions
- b. OMB Circular A-87, Cost Principles for State, Local, and Indian Tribal Governments
- c. OMB Circular A-122, Cost Principles for Non-Profit Organizations
- d. 48 CFR Part 31, Contract Cost Principles and Procedures
- e. Appendix E of 45 CFR Part 74, Principles for Determining Costs Applicable to Research and Development Under Grants and Contracts with Hospitals

**3. Other Requirements.**

- a. OMB Circular A-50, Audit Follow-Up
- b. OMB Circular A-89, Federal Domestic Assistance Program Information
- c. OMB Circular A-129, Policies for Federal Credit Programs and Non-Tax Receivables
- d. OMB Circular A-133, Audits of States, Local Governments and Non-Profit Organizations and Supplement
- e. 4 CFR Part 101-105, Federal Claims Collection Standards
- f. 5 CFR Part 1320, Controlling Paperwork Burdens on the Public

- g. 15 CFR Part 8, Nondiscrimination in Federally Assistance Programs of the Department of Commerce - effectuation of Title VI of the Civil Rights Act of 1964
- h. 15 CFR Part 8a, Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance
- i. 15 CFR Part 8b, Prohibition of Discrimination Against the Handicapped in Federally Assistance Programs Operated by the Department of Commerce
- j. 15 CFR Part 11, Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs
- k. 15 CFR Part 13, Intergovernmental Review of Department of Commerce Programs and Activities
- l. 15 CFR Part 20, Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance
- m. 15 CFR Part 21, Administrative Offset
- n. 15 CFR Part 25, Program (Fraud Civil Remedies)
- o. 15 CFR Part 26, Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)
- p. 15 CFR Part 27, Protection of Human Subjects
- q. 15 CFR Part 28, New Restrictions on Lobbying
- r. 15 CFR Part 1170, Metric Conversion Policy for Federal Agencies
- s. 31 CFR Part 223, Surety Companies Doing Business with the United States
- t. 37 CFR Part 401, Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts, and Cooperative Agreements
- u. EO s 12549 and 12689, Debarment and Suspension
- v. OMB Standard Form 424B, Assurances Non-Construction Programs and OMB Standard Form 424D, Assurances Construction Programs, which reference laws and regulations that may apply to particular awards
- w. Animal Welfare Act, as amended (7 U.S.C. 2131-2156)

x. Federal Grant and Cooperative Agreements Act of 1977, as amended (31 U.S.C. §§ 6301-6308).



### 3. GLOSSARY OF TERMS AND ACRONYMS

A. For purposes of this Manual, the following definitions will apply.

1. **Administrative Offset.** Satisfying a debt by withholding money payable by the Department to, or held by the Department on behalf of a person (i.e., an individual, business, organization, or other entity but not an agency of the United States Government or any State or local government) to satisfy a debt owed the Federal Government by that person. (See 15 CFR Part 21.)
2. **Amendment.** A change made to an award. Examples of amendments include, but are not limited to, the following: continuations, renewals, supplementals, no-cost extensions, and budget revisions.
3. **Award.** A grant or a cooperative agreement.
4. **Award Date.** The date that the Grants Officer signs the award document.
5. **Award Period.** The period established in the award document during which Federal sponsorship begins and ends. The term award period is also referred to as project period in 15 CFR §14.2 (cc).
6. **Budget Data Analysis.** The review and evaluation of the reasonableness, allowability, and allocability of an applicant's proposed budget data and of the judgmental factors applied in projecting the estimated costs.
7. **Close-Out.** The process by which the Department determines that all financial assistance award requirements and applicable administrative actions have been completed by the recipient and DOC. Notwithstanding this, projects may be closed out prior to receiving all reports under the Government Performance and Results Act.
8. **Competitive Award.** An award made with discretionary funds after a solicitation of proposals has been published in the *Federal Register* and where DOC chooses one proposal over another based on merit review and the application of established evaluation and selection criteria.
9. **Competitive Award Program.** A financial assistance program under which funds are awarded on the basis of merit or need and to which an applicant is not entitled as a matter of law.
10. **Congressional Direction.** Any statement of legislative intent included in the Reports by the House, Senate, or Conference Appropriations Committees which directs DOC or its operating units to take action (or inaction) regarding its projects.

11. Continuation. An amendment that provides continued funding within the approved award period. Unlike a renewal, a continuation does not extend the award period; rather, it provides additional funding within an already existing award period. Continuation amendments are used with multi-year awards as discussed in Chapter 20 of this Manual. In the case of multi-year awards using fixed-year funds, the continuation amendment will provide additional funding and specify the exact funding period for the additional funds.
12. Contract. The legal instrument reflecting a relationship between a recipient or subrecipient and contractor or between such contractor and subcontractor whenever the principal purpose of the relationship is the acquisition, by purchase, lease, or barter, of property or services.
13. Cooperative Agreement. The legal instrument reflecting a relationship between DOC and a recipient whenever: (1) the principal purpose of the relationship is to transfer money, property, services, or anything of value to accomplish a public purpose of support or stimulation authorized by Federal statute and (2) substantial involvement (e.g., collaboration, participation, or intervention by DOC in the management of the project) is anticipated between DOC and the recipient during performance of the contemplated activity. Cooperative agreements are subject to the same OMB, Treasury, and other Federal laws and policies as grants. See 31 U.S.C. 6305.
14. Credit Report. Any written or documented oral communication of information provided by a commercial or consumer credit reporting agency dealing with the creditworthiness or financial reliability of an applicant or debtor. The credit report is a useful tool which can assist program and grants management officials in determining an applicant's financial condition and capacity.
15. Delinquent Debt. A debt not paid within 15 days of the due date or if there is no due date, within 30 days of the billing date. See 15 CFR § 21.4.
16. Department. United States Department of Commerce (DOC), unless otherwise indicated. As used in this Manual, DOC includes the Office of the Secretary and the operating units.
17. Discretionary Award Program. A financial assistance program under which DOC can exercise its judgement in selecting to whom the funds are awarded.
18. Discretionary Funds. Funds for which the Department can exercise its judgement in selecting to whom the funds are awarded.
19. Equipment. Tangible, nonexpendable, personal property having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit. For awards subject to 15 CFR Part 14, equipment also includes exempt property charged directly to the award.
20. Financial Assistance. A transfer of money, property, services or anything of value to a recipient in order to accomplish a public purpose of support or stimulation which is authorized

by Federal statute. As used in this Manual, it includes only grants and cooperative agreements and does not include any agreement under which only direct Federal cash assistance to individuals, a subsidy, loan, loan guarantee, or insurance is provided.

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

22. Funding Period. The period of time when Federal funding is available for obligation by the recipient. The funding period must always be specified in multi-year awards using fixed-year funds. This term may also be used to mean budget period.

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

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

25. Head of Operating Unit. The head of an operating unit includes Secretarial Officers and the heads of primary operating units, as defined in DOO 1-1. The heads of some operating units are Program Secretarial Officers; in other cases, they are other officers who report and are responsible to a Program Secretarial Officer or directly to the Secretary or Deputy Secretary, as may be specified. (See also Paragraph 36, Operating Unit, in this chapter.)

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

27. Insular Area. As defined by Public Law 95-134, Title V, § 501 (1977), as amended (48 U.S.C. 1469a), the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia, and the Republic of the Marshall Islands and the Republic of Palau.

28. **Merit Review.** A thorough, consistent, and independent examination of an application based on pre-established criteria by persons knowledgeable in the field of endeavor for which support is requested. A merit review must be conducted by an impartial, objective, unbiased individual with the requisite expertise, knowledge, and experience in a technical field who can evaluate or assess a proposal for its value, quality, and likelihood of success. One who conducts a merit review must not have a conflict of interest, or the appearance of a conflict of interest, regarding any application under his or her review.
29. **Multi-Year Award.** A financial assistance award which has an award period of more than 12 months of activity, which is partially funded when the award is approved, and is subsequently funded in increments. This does not include awards which are fully funded. See Chapter 20 of this Manual.
30. **Name Check.** A tool designed to assist program and grants management officials in determining the responsibility, financial integrity, and management principles of key individuals in an organization proposed for funding.
31. **New Grant/New Award.** The initial funding for an award not previously funded by the operating unit. A new award is the only type of award that will be issued on Form CD-450, Financial Assistance Award.
32. **No-Cost Extension.** An amendment that extends the award period and funding period with no additional funding.
33. **Noncompetitive Award.** An award made with discretionary funds but without the benefit of competition.
34. **Nondiscretionary Award Program.** A financial assistance program under which a statute specifically names the intended recipient(s) or limits eligibility to all members of a particular class or classes of recipients.
35. **Nondiscretionary Funds.** Funds for which a statute specifically names the intended recipient or limits the eligibility to all members of a particular class or classes of recipients.
36. **Operating Unit.** A primary organizational unit of DOC delegated authority by the Secretary of Commerce to award financial assistance. Sometimes also referred to in this Manual as the funding agency.
37. **Pre-Award Period.** The approved period of time allotted to the award prior to the beginning of the award period as listed on the Form CD-450, Financial Assistance Award. Generally, the pre-award period will not usually exceed 90 days prior to the beginning of the award period.

38. Procurement Contract. A legal instrument reflecting a relationship between DOC and a business, organization or individual whenever: (a) the principal purpose of the relationship is the acquisition, by purchase, lease, or barter, of property or services for the direct benefit or use of the Federal Government, or (b) it is determined in a specific instance that it is appropriate to use a type of procurement contract. Such an instrument is governed by the Federal Acquisition Regulation. See 31 U.S.C. 6303.
39. Program Officer. The DOC official responsible for the technical, scientific, or other programmatic aspects of an award/program.
40. Real Property. Any land, improved land, structures, long-term leases, easements, appurtenances thereto, or other improvements, excluding movable machinery and equipment. Improved land also includes land which is improved by the construction of such project facilities as roads, sewers, and water lines which are not situated directly on the land but which contribute to the value of such land as a specific part of a project purpose.
41. Recipient. Any individual or entity which receives DOC financial assistance as defined in Paragraph 20 of this chapter, Financial Assistance. The term grantee is synonymous with the term recipient.
42. Renewal. An amendment that extends the award period and funding period, while adding additional funds to the award.
43. Selecting Official. A senior program official of the operating unit who is authorized to make final selection recommendations to the Grants Officer for final approval of award applications.
44. Subaward. An award of financial assistance made under an award by a recipient to an eligible subrecipient or by a subrecipient to a lower subrecipient (sometimes referred to as a subgrant). This term does not include the procurement of goods and services.
45. Subcontract. A contract under an award by a recipient s or a subrecipient s contractor.
46. Subrecipient. Any individual or entity that receives an award from a recipient of a DOC award.
47. Supplemental. An amendment that provides funding over and above the approved budget during the current funding period with no change to the award period, the funding period, or the scope of work.
48. Suspension of Award. An action which temporarily suspends Federal sponsorship (as opposed to suspension of payments) under the award pending corrective action by the recipient or a decision to terminate the award. All activities under the award must cease and no costs may be incurred by the recipient during the suspension of award.

49. Suspension of Payment. An action to temporarily withhold payment of funds under the award pending correction of identified deficiencies by the recipient. Activities under the award may continue and the recipient may continue to incur costs during the suspension of payment. See also Chapter 11, Section B.2., of this Manual.

50. Termination. Cancellation of Federal sponsorship, in whole or in part, under a grant at any time prior to the date of completion of an award.

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

B. The following is a list of acronyms used in this Manual.

1. AGC/L&R - Assistant General Counsel for Legislation and Regulation
2. ASAP - Automated Standardized Application for Payment
3. CAIVERS - Credit Alert Interactive Voice Response System
4. CBD - Commerce Business Daily
5. CFDA - Catalog of Federal Domestic Assistance
6. CFO/ASA - Chief Financial Officer and Assistant Secretary for Administration
7. CFR - Code of Federal Regulations
8. CRADA - Cooperative Research and Development Agreement
9. DAO - Department Administrative Order
10. DOC - Department of Commerce
11. DOO - Department Organization Order
12. EDA - Economic Development Administration
13. EO - Executive Order
14. FAADS - Federal Assistance Award Data System
15. FALD - Federal Assistance Law Division
16. FOIA - Freedom of Information Act

17. GAO - General Accounting Office
18. GSA - General Services Administration
19. ITA - International Trade Administration
20. MBDA - Minority Business Development Agency
21. MOU - Memorandum of Understanding
22. NIST - National Institute of Standards and Technology
23. NOAA - National Oceanic and Atmospheric Administration
24. NTIA - National Telecommunications and Information Administration
25. OCA - Office of Congressional Affairs
26. OEAM - Office of Executive Assistance Management
27. OEBAM - Office of Executive Budgeting and Assistance Management
28. OGC - Office of General Counsel
29. OIG - Office of Inspector General
30. OLIA - Office of Legislative and Intergovernmental Affairs
31. OMB - Office of Management and Budget
32. PA - Privacy Act
33. PRA - Paperwork Reduction Act
34. RFA - Request for Applications
35. RIN - Regulation Identification Number
36. SPOC - Single Point of Contact
37. ST&Cs - Financial Assistance Standard Terms and Conditions
38. TOP - Treasury Offset Program
39. U.S.C. - United States Code

## 4. RESPONSIBILITIES IN GRANTS ADMINISTRATION

### A. Chief Financial Officer and Assistant Secretary for Administration.

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

[**Note:** Under DOO 10-4, EDA has been delegated authority by the Secretary of Commerce to administer the Public Works and Economic Development Act and pertinent provisions of the Trade Act, among other matters. This includes grants administration for such programs. In addition, NIST and NOAA are delegated through DOOs 30-2A and 10-15, respectively, the authority to perform functions in the Federal Grant and Cooperative Agreement Act of 1977 (Public Law 95-224) with regard to making grants and cooperative agreements.]

2. The CFO/ASA hereby delegates the following authorities with respect to awards subject to the provisions of 15 CFR Part 14:

a. The Grants Officer may apply less restrictive requirements when awarding small awards, except for those requirements that are statutory. As defined by 15 CFR Part 14, a small award is a grant or cooperative agreement that does not exceed the small purchase threshold, which is currently \$100,000.

b. The Grants Officer may approve exceptions on a case-by-case basis, regardless of the amount of Federal funding. The regulation stipulates that an exception made on a case-by-case basis will only apply to a single award.

[**Note:** This delegation of authority may not be redelegated by the Grants Officer. 15 CFR § 14.4, Deviations, states, However, in the interest of maximum uniformity, exceptions from the requirements of this part shall be permitted only in unusual circumstances. See Chapter 10, Section A.10., of this Manual for minimum documentary information which must be included in the official award file.]

**B. Office of Executive Budgeting and Assistance Management.** Pursuant to DOO 20-28, the Director for Executive Budgeting and Assistance Management is delegated the authority to develop, issue and oversee implementation of policies and procedures for the administration of DOC financial assistance programs (including grants, cooperative agreements, loans, and loan guarantees) and to oversee implementation of DOC's audit follow-up program with respect to financial assistance programs. The OEAM Director also serves as the Debarring and Suspending Official for DOC nonprocurement actions. DOO 20-28 further delegates financial assistance functions to OEAM. The following functions will be performed by OEAM:



1. Provide guidance, interpretations, and technical assistance on regulations, policies, and procedures for the administration of financial assistance to Grants Officers, Program Offices, and others as needed;
2. Develop, prepare, coordinate, and submit notices of Department-wide proposed rulemaking, interim final rules, final rules, and other *Federal Register* notices on financial assistance matters to the Office of Assistant General Counsel for Legislation and Regulation (AGC/L&R), with copies of comments and/or clearances received during coordination;
3. Provide to OMB and other Federal agencies, after review and comment by appropriate operating unit and other Departmental staff, consolidated DOC comments about proposed new government-wide policies and procedures and proposed revisions to policies and procedures related to financial assistance issues;
4. Notify appropriate operating unit and Departmental staff of changes and revisions to government-wide financial assistance policies and procedures or other matters related to financial assistance;
5. Conduct or participate in reviews, task force groups, or other assessments to assure compliance with policies and procedures established for the administration of DOC grant programs;
6. Evaluate, in consultation with other offices as appropriate, status updates provided on implementation of financial assistance audit findings;
7. Develop reports on implementation activities of procurement and financial assistance audit recommendations as necessary for the Secretary's Report to Congress;
8. Serve as the DOC liaison and single point of contact for DOC with OMB, the General Accounting Office, the Department of the Treasury, and other agencies on financial assistance matters;
9. Coordinate the collection and submission of the information for DOC financial assistance transactions to the government-wide Federal Assistance Awards Data System (FAADS);
10. Prepare, issue, and maintain this Manual and interpret its policies, standards, and procedures;
11. Consider requests for waivers to the provisions of the Manual, as permitted by governing statutes and regulations, and notify the Head of the Operating Unit of the decision to approve or deny the request. If a waiver is denied, a written explanation will be provided to the requester;
12. Convene Department-wide Grants Officer and Grants Council meetings as needed;

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

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

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

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

d. Other documents as appropriate.

14. Serves as Grants Officer for designated operating units, including ITA, MBDA, NTIA, and the Office of the Secretary.

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

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

a. The Federal Assistance Law Division (FALD) provides legal representation, advice, and support to Grants Officers and Specialists, Program Officers, OEAM, the Nonprocurement Debarring Official, the CFO/ASA, and others. The following functions are performed by FALD:

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

(1) FALD provides legal representation before the General Accounting Office and administrative tribunals. FALD also provides direct support to the Grants Officer in Federal court litigation regarding the award, administration, and cost disallowance under grants and cooperative agreements.

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

(3) FALD participates, as appropriate, in compliance reviews, task force groups, or other assessments to ensure compliance with all laws, executive orders, regulations, and policies governing DOC financial assistance.

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

c. The Assistant General Counsel for Finance and Litigation provides legal advice and services to the Debt Workout Groups in accordance with the DOC Credit and Debt Management Operating Standards and Procedures Manual. The General Litigation Division assists with final terminations, settlements, compromise of claims, or referrals of claims to the Department of Justice for collection. The General Litigation Division also provides legal advice and services relative to debt collection and, where litigation is a possibility, compliance with environmental laws (e.g., the National Environmental Policy Act of 1969 and state analogs, and the Comprehensive Environmental Response, Compensation and Liability Act of 1980.)

2. Some decisions or actions have been determined to raise significant legal issues and therefore require FALD clearance:

a. Proposed rules, interim rules, final rules, *Federal Register* notices of availability of funds, annual solicitations, and requests for proposals relating to financial assistance;

b. Notices of nonprocurement debarment or suspension, determinations, and settlements under 15 CFR Part 26;

c. Audit appeal determinations under DAO 213-5, Audit Resolution and Follow-Up ;

3. FALD review and opportunity to comment is required for the following actions, determinations, and/or documents. The decision-making authority rests with the respective Program Official, Grants Officer, or OEAM responsible for the proposed action:

- a. Application kits/packages, technical evaluation forms, and conflict of interest forms for reviewers. This includes other documents which establish procedures for awards under a financial assistance program.
  - b. Packages summarizing the competitive review of discretionary funds in accordance with Chapter 8, Section C, of this Manual. These packages should be reviewed by FALD as early as possible prior to approval of awards.
  - c. Proposed financial assistance awards.
    - (1) Proposed financial assistance competitive awards where the Federal funding is more than \$100,000 and all noncompetitive awards. This includes all amendments that add more than \$100,000 in funding or add or change the scope of work.
    - (2) OGC will consider changing the \$100,000 threshold for legal review of competitive awards on a program-by-program basis. OGC will also consider changing the requirement for legal review of all continuation amendments under multi-year awards, as appropriate. Grants Officers may submit a written request setting forth a justification for changing the threshold to the Chief, FALD, who may provide written approval of such a request when warranted. Contact FALD for further information.
- [**Note:** Chapter 20 of this Manual provides guidance on multi-year funding procedures.]
- d. An interagency or intra-agency agreement effecting the transfer of financial assistance authority or funds for the award of a grant or cooperative agreement;
  - e. Nonresponsibility and high risk determinations regarding proposed applicants selected for funding;
  - f. Notices of suspension or termination of awards;
  - g. Replacement grantees, assignments, and novations; and
  - h. Selecting official s involvement as an independent reviewer.
4. Some actions/decisions/documents benefit from legal consultation which will be provided upon request. It is in the best interest of the Department that Program Officials and Grants Officers consider all legal ramifications of key decisions related to the award and administration of financial assistance. The decision-making authority rests with the responsible Program Official, Grants Officer, or OEAM. FALD may, upon request, provide coordinated legal review and comment upon the following actions and/or documents:
- a. Budget certification as to the availability of funds, which shall include representations on the following matters when appropriate:

- (1) time limitation of funds (annual funds vs. no-year funds);
  - (2) appropriations act earmarks; and
  - (3) any other legislative restrictions on appropriations.
- b. Proposed requests for OMB clearance of information collection activities under financial assistance programs;
  - c. Disputes relating to the terms of the award, particularly on occasions when other parties associated with the award are represented by their own attorneys in discussions or written communications on aspects of the grant;
  - d. Audit resolution determinations establishing a debt, claim, or other adverse action against a recipient. FALD can also provide services as a mediator, facilitator, or third party negotiator for reaching audit resolution determinations when agreement between Grants Officer, Program Official, and OIG Auditor cannot be reached;
  - e. Comments prepared by DOC officials on proposed rules, interim rules, and revisions to OMB Circulars applicable to Federal assistance including, but not limited to, the award, administration, and audit of grants and cooperative agreements;
  - f. Congressional, Freedom of Information Act (FOIA), and executive correspondence relating to financial assistance;
  - g. Amendments to awards involving significant or unique issues; and
  - h. Any other issues with legal ramifications.

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

1. Conduct, supervise, or coordinate Inspector General (IG) audits, inspections, or investigations relating to DOC financial assistance programs and operations;
2. Coordinate notice to the appropriate Grants Officers of negative findings reported on audits conducted in accordance with the provisions of the Single Audit Act of 1996 and OMB Circular A-133.
3. Prepare reports on audit resolution activities as necessary for the IG's Semiannual Report to Congress.

4. Evaluate, in consultation with other offices as appropriate, responses and proposed actions on OIG recommendations.
5. Participate with the Grants Officer in the resolution of audits conducted on financial assistance awards funded by DOC.
6. Review and advise on the adequacy of the financial management systems maintained by applicants and recipients, the projected or claimed costs, and the projected or reported performance.
7. Perform name check reviews as appropriate for key individuals associated with for-profit and non-profit applicants subject to a name check review process and inform the Grants Officer of the results. Chapter 21 of this Manual provides guidance on name check procedures.
8. Perform indirect cost rate negotiations, reviews, and approvals, as appropriate.
9. Provide guidance about audit related matters to Grants Officers, Program Officers, their staffs, OEAM, and others as needed.
10. Participate as appropriate in reviews, task force groups, or other assessments to assure compliance with policies and procedures established for the administration of DOC grant programs.
11. Recommend policies and procedures to promote economy and efficiency, and to prevent and detect fraud, waste, and abuse in DOC financial assistance programs and operations.

**E. Financial, Budgeting, and Accounting Responsibilities.** The following financial and accounting duties must be assigned and fulfilled in connection with financial assistance programs and individual awards:

1. Certify funding availability (this includes assurance that the budgetary line item from which the funds originate is compatible with the financial assistance program under which the funds will be obligated). If the funds were transferred from another Federal agency, provide a copy of the interagency agreement reflecting the statutory authority for the transfer of funds to DOC and the transferring agency's statutory authority to provide financial assistance for this purpose.
2. Provide documentation regarding time limitation of funds (e.g., annual funds).
3. Provide citation and, when known, identification of intended recipient for statutory earmarks or Congressional direction to fund financial assistance projects identified in the appropriation act or provided in the House, Senate, or Conference Appropriations Committees reports accompanying the appropriation act. If the earmarked project is contained in the report

language and not in the appropriation act, consult FALD to identify the independent statutory authority to make a grant for this purpose.

4. Notify the Grants or Program Officer, as appropriate, of any other restrictions on appropriations.
5. Coordinate with the appropriate program officers on the establishment of program numbers and updating of the financial assistance information in the Catalog of Federal Domestic Assistance (CFDA) in accordance with the requirements of OMB Circular A-89, Federal Domestic Assistance Program Information.
6. Provide full accounting support and financial advice to Grants Officers, Program Officers, the operating unit, and others as needed.
7. Provide financial data and reports on grants as requested by other Federal agencies, the operating unit, or the Grants Officer.
8. Record the financial transactions associated with each financial assistance award from inception to close-out, including obligation and deobligation of funds, payments, establishment of accounts receivable, and regularly scheduled billings.
9. As recommended by appropriate grants officials, process requests and documentation for disbursement of funds to be issued by electronic funds transfer or by Treasury check when necessary in accordance with the provisions of the Debt Collection Improvement Act of 1996.
10. Notify the Grants Officer and the Program Officer when accounts receivable become delinquent.
11. Provide a monthly listing of delinquent debtors to the Grants Officer for each DOC operating unit and to OEAM.
12. Perform the functions normally assigned to the Finance/Accounting Officer, including those stipulated in the DOC Credit and Debt Management Operating Standards and Procedures Handbook.

**F. Grants Management Responsibilities.** The Grants Officer oversees the business management and administrative aspects of grants and cooperative agreements. The Grants Officer shall have sufficient experience, training, and expert knowledge in the area of management of Federal grants and cooperative agreements; analysis and resolution of audits of Federal financial assistance awards; and be fully aware of and capable of requiring compliance with applicable laws, regulations, EOs, and policies to effectively carry out these duties. The Grants Officer or designee will coordinate as appropriate with the Program Officers and other appropriate Departmental offices. Grants Officers shall carry out the responsibilities identified in Paragraphs 1, 2, 3, and 4 of the section without any redelegation to other parties. The duties

outlined in Paragraphs 5 through 27 may be further delegated by the Grants Officer to appropriate members of the Grants Officer's staff. Although these actions may be delegated to appropriate members of the Grants Officer's staff, these duties ultimately remain the responsibilities of the Grants Officer. Grants administration functions are as follows:

1. Sign awards and amendments that obligate or deobligate funds.
2. Suspend or terminate individual awards, excluding debarment or suspension of a recipient as provided under 15 CFR Part 26.
3. Make determinations of non-responsibility and designations of high-risk recipients.
4. Approve, as appropriate, less restrictive requirements and exceptions pursuant to the delegation of authority from the CFO/ASA in accordance with Section A.2. of this chapter.
5. Provide grants administration guidance and support to Program Officers, recipients, and others as needed.
6. Maintain the official award files in accordance with Chapter 10, Section A, of this Manual.
7. Ensure that each financial assistance award is prepared and administered in accordance with applicable statutes, regulations, OMB guidance, EOs, and DOC policies.
8. Perform analysis of a proposed budget to assure that costs in the award budget are reasonable, allowable, and allocable in accordance with the applicable cost principles.
9. Ensure that pre-award administrative procedures are carried out, including but not limited to the following:
  - (a) Assurance that the recipient was competitively selected by the appropriate independent or technical review process or that appropriate noncompetitive selection procedures were followed in accordance with Chapter 8 of this Manual and that the official award file contains the required documentation with respect to selection procedures;
  - (b) Review of any justification for noncompetitive award of discretionary funds and make determination of adequacy of that justification and the basis for the justification; review of credit reports when negative findings are reported;
  - (c) Verification concerning an outstanding delinquent receivable or debt;
  - (d) If applicable, consideration of results of name check review; review of any available A-133 or other audit report;



- (e) Review of the General Services Administration's (GSA s) "Lists of Parties Excluded from Federal Procurement or Nonprocurement Programs" to determine whether the applicant has been debarred, suspended, or otherwise excluded from receiving financial assistance;
  - (f) Assurance that the applicant has submitted a completed form CD-511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying ;
  - (g) Selection of the appropriate funding instrument to be used in a particular transaction, i.e., grant, cooperative agreement, or contract and development of appropriate special award conditions defining the role of the Federal Government when the level of involvement is determined to be substantial and award of a cooperative agreement is warranted;
  - (h) Inclusion of Department of Commerce Financial Assistance Standard Terms and Conditions" (DOC ST&Cs) in awards, as applicable, as well as any special award conditions required to protect the Federal Government's interest;
  - (i) Examination of proposed pre-award costs to determine necessity and applicability to project objectives and approval or disapproval of the pre-award costs, as appropriate;
  - (j) Assurance that appropriate signatures are obtained, as necessary, on Form CD-346 for the name check review process; and
  - (k) Collection of all necessary internal clearances (such as OIG, OGC, etc.) for inclusion in the official file.
10. Ensure recipient's compliance with award conditions and take appropriate action in accordance with Chapter 11 of this Manual when there is non-compliance.
11. Review, as necessary, subcontracts and subgrants by the recipient to determine compliance with applicable administrative requirements, requests for foreign travel, and requests for extension of reporting periods.
12. Receive and review financial reports submitted by the recipient to ensure that:
- a. Recipients are expending funds at an appropriate rate and that matching requirements are being met;
  - b. Federal disbursements are comparable with the period covered by requests for payment;
  - c. Recipients are not maintaining excess cash on hand;
  - d. Reports submitted by the recipient agree with DOC accounting records of disbursements;

- e. Reports contain information on indirect costs and program income if these items are included in the approved budget; and
  - f. Reports are completed correctly.
13. Review and approve requests for advance or reimbursement or contact recipient if payment cannot be made as requested.
  14. Provide proper notice to any recipient 30 days in advance of withholding payments, including information on how to remedy the withholding of payments and the assurance that payments will be resumed once the recipient has met requirements.
  15. Review recommendations for no-cost amendments (which include, but are not limited to, budget revisions, time extensions to the award period, or changes in the work schedule or key personnel) and approve or notify the Program Office and/or recipient of reason for disapproval.
  16. Manage disposition of Federally-owned property by ensuring that the appropriate Property Management Officer is notified of the existence, nature, value, and location of grants property available for disposition, as appropriate.
  17. Ensure that the award is properly closed out and, as applicable, that the official award file is held in the appropriate records holding facility for the appropriate time period before the file is destroyed.
  18. Review the audit report, the recipient's response, and the Program Officer's comments and prepare the audit resolution proposal in accordance with DAO 213-5.
  19. Notify recipient of any account receivable which is being established and provide required information about how to make payment as well as consequences of nonpayment.
  20. Review and process appeals of financial assistance audit resolution determinations in accordance with the provisions of DAO 213-5.
  21. Monitor open financial assistance audit recommendations; ensure that open recommendations are properly implemented or, where appropriate, that a delinquent debt is referred to the Debt Workout Group; and ensure that updated status reports for the Secretary's Semiannual Report to Congress on Inspector General audits are properly submitted in a timely manner to OEAM.
  22. Review in a timely manner the following documents for conformance to government-wide and DOC financial assistance administrative requirements:
    - a. Proposed *Federal Register* notices;

- b. Application kits/packages;
- c. Publications (including information on the DOC, operating unit, or program Internet Web site) that include information on financial assistance award management or administration;
- d. Proposed requests for OMB clearance of information collection activities under financial assistance programs; and
- e. Other documents as appropriate.

23. Coordinate review, upon request, of proposed *Federal Register* notices announcing the availability of Federal funds for financial assistance or soliciting applications for awards, and submit the prepared notices to AGC/L&R. These notices shall be prepared in accordance with instructions at Chapter 19 of this Manual.

24. Ensure that the quarterly financial assistance transactions are reported accurately and in a timely manner to the OEAM for the FAADS.

25. Refer proposed nonprocurement suspension and debarment actions to the Department's Debarment and Suspending Official in accordance with provisions contained in 15 CFR Part 26.

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

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

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

- 1. Policy Implementation.
  - a. Establish procedures which support the requirements of this Manual and ensure conformance with the provisions of the Manual;
  - b. Review relevant draft regulations;
  - c. Ensure each program's compliance with Federal, Departmental, and operating unit's grants administration requirements;
  - d. Implement the policy requirements as set forth in this Manual.

2. Monitoring.
  - a. Review the operating unit s grants administration system for compliance with this Manual; and
  - b. Review grant forms and other grant documents for compliance with applicable requirements.
3. Liaison and Coordination.
  - a. Answer questions and inquiries on grant-related matters.
  - b. Coordinate, as appropriate, the operating unit s consolidated funding and other grant-related activities.
  - c. Assure appropriate coordination of proposed publications for the *Federal Register* through OEAM, OGC, and other DOC offices as appropriate.
  - d. Disseminate information from OEAM to appropriate operating unit personnel and offices.
4. Information Collection, Analysis, and Dissemination. Coordinate preparation and submission of reports on grant-related matters for DOC.

**H. Programmatic Responsibilities.** The Program Officer is responsible for monitoring and oversight of the work being conducted under an award, such as tracking the recipient s progress and comparing the actual accomplishments with the goals and objectives established in the award. The Program Officer shall have sufficient experience, training, and expert knowledge in the specific program area and in program management in general, including knowledge of applicable laws, regulations, and Departmental policies as well as program-specific goals, priorities and policies, to effectively manage the program area and to advise the Grants Officer on all programmatic aspects of the awards. The following are programmatic functions to be performed by the operating unit:

1. Provide programmatic guidance and technical assistance to recipients, Grants Officers, and other officials, as necessary.
2. Establish programmatic policy within the scope of authorizing legislation and Departmental goals and objectives.
3. Develop evaluation criteria and weights or relative values used for competitively selecting applications.
4. Prepare notices announcing the availability of funds or other grant-related documents for publication in the *Federal Register*.

5. Prepare, in consultation with the Grants Officer, the application package for the program, including any requests for OMB clearance of information collection activities that may be required by the program or by individual financial assistance awards under the program.
6. Develop and coordinate the competitive review process in accordance with Chapter 8 of this Manual, select qualified reviewers who have no conflicts of interest, ensure that each application receives the appropriate (independent or technical) and objective review, and verify that the ranking or selection of applications is based on the published selection criteria.
7. Develop and provide to the Grants Officer written justification for proposed noncompetitive awards of discretionary funds and provide basis for justification.
8. Receive and review applications and proposals. Also review justifications for compliance with existing program guidelines, regulations, and legislation, as well as proposed budgets to determine the reasonableness, necessity, and adequacy of proposed costs for accomplishing the objectives of the proposed award.
9. Establish criteria for evaluating project performance.
10. Provide to Grants Officer, for the official award file, a complete and accurate funding recommendation package in accordance with instructions contained in Chapter 9, Section B., of this Manual. This includes the packages summarizing the results of the competitive review process described in Chapter 8, Section C., of this Manual.
11. Provide or make available to the Grants Officer for the official award files: internal memoranda and all correspondence (original signatures required when available) regarding specific award files, recipient performance reports, written evaluations of performance reports and of any on-site visits, and commercial credit reports, if applicable.
12. Notify unsuccessful applicants of decision not to fund an application in accordance with Chapter 8 of this Manual.
13. Monitor project activities to ensure that goals are being achieved and the project is being carried out properly.
14. Provide written background and recommendations to the Grants Officer on programmatic issues, such as amendments to the scope of work or budget.
15. Review financial and performance or technical reports for consistency with approved project. Notify the Grants Officer if the recipient is not in compliance with the terms of the award.
16. Evaluate all performance, property, and patent reports submitted by the recipient in a timely manner and provide a copy, as required, to the Grants Officer.

17. Report to Grants Officer in a timely manner on potential or existing problems, financial inconsistencies, or situations of noncompliance and provide recommendation for remedy.
18. Monitor the recipient's purchase and use of property purchased with award funds or furnished by the Federal Government under the grant, and assist the Grants Officer to ensure compliance with the relevant provisions of 15 CFR Part 24.31, 15 CFR Part 14.32, the DOC Personal Property Management Manual, the DOC Real Property Management Manual, and any other applicable legal statutory requirements.
19. Review, analyze, and comment on audit reports provided by the Grants Officer for review and comment, the recipient's response to audit reports, and audit determination appeals.
20. Assure that any FOIA requests for documents in the Program Office files are reviewed and released or withheld in accordance with the provisions of the FOIA.
21. Ensure compliance with all relevant programmatic statutes, regulations, EOs, and policies, including, for example, civil rights and environmental issues. These factors should be considered at an early stage in the application or proposal review process. This includes encouraging applicants to build environmental considerations into their own planning processes in a way that facilitates National Environmental Policy Act and other environmental compliance requirements. The funding agency is ultimately responsible for environmental compliance and has a duty to enforce recipient compliance as a condition of funding.  
  
[**Note:** Civil rights factors should be considered at an early stage beginning in the preapplication or preliminary proposal review process. This includes ensuring that applicants involve minorities, women, and people with disabilities into the planning processes or projects and that projects are in compliance with requirements. The operating unit is responsible for civil rights compliance and has a duty to enforce recipient compliance as a condition of funding.]
22. Recommend to the Grants Officer suspension or termination of the award, when appropriate.
23. Provide one copy each to the Grants Officer and to the Budget Officer of any agreement effecting a transfer of funds from other Federal agencies or from another DOC operating unit for award(s) and identify to the Grants Officer any restrictions placed on funds that are transferred from other Federal agencies for inclusion in a DOC grant or cooperative agreement.  
  
[**Note:** A transfer of funds cannot be used for financial assistance unless there is statutory authority allowing the transfer. In addition, both the DOC operating unit and the other agency must possess the requisite grant-making and mission-related authorities to carry out the work under the award. Also, see Chapter 16, Section X., of this Manual.]
24. Arrange for an independent review to be conducted of institutional grant program and/or awards in accordance with Chapter 16, Section K.2., of this Manual.

## **I. Property Management Responsibilities.**

1. Ensure uniform implementation of operating unit policies and procedures pertaining to the administration of property purchased by the recipient with funds under the award or furnished by the Federal Government under an award;
2. If requested by the Grants Officer, provide guidance to recipients in establishing and maintaining property accountability systems, and in the use and control of property acquired under the provisions of an award;
3. If requested by the Grants Officer, establish and maintain property accountability records, provide property disposition instructions to recipients, and provide a copy of the instructions to the Grants Officer; and
4. Provide support and assistance to the Grants and Program Officers, as needed, regarding any and all property matters, including real property funded or partially funded with Federal funds through a financial assistance award.

## 5. RELATIONSHIPS WITH OUTSIDE ENTITIES

### A. Overview

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

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

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

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

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

1. Sections C. and G. of the OMB Guidelines of August 18, 1978, describe the characteristics of the factors which each Grants Officer should consider in deciding whether there will be substantial involvement of the organization unit in the performance of activities under the assistance instrument.



2. Listed below are examples of involvement which may be substantial depending upon the circumstances, and examples of situations which would not be considered substantial. The examples are not meant to be a checklist nor does the presence of a single factor necessarily constitute substantial involvement. Rather, they illustrate concepts that, in varying degrees or combinations, could suggest the use of either a grant or a cooperative agreement. For more detailed examples, see the OMB guidelines, Implementation of Federal Grant and Cooperative Agreement Act of 1977 (43 FR 36860).

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

- (1) Authority to halt immediately an activity if detailed performance specifications (e.g., construction specifications) are not met.
- (2) Stipulation that the recipient must meet or adhere to specific procedural requirements before subsequent stages of a project may continue.
- (3) Approval by an appropriate DOC official of substantive provisions of proposed subawards.
- (4) Involvement in the selection of key recipient personnel.
- (5) Requirement that the appropriate DOC official (1) collaborate with the recipient by working jointly with a recipient scientist or technician, in carrying out the scope of work, (2) train recipient personnel, or (3) detail Federal personnel to work on the project effort.
- (6) Specify direction or redirection of the scope of work due to inter-relationships with other projects, such as requiring recipients to achieve a specific level of cooperation with other projects.
- (7) DOC operational involvement during the project to ensure compliance with such statutory requirements as civil rights and environmental protection.
- (8) Limitation on recipient discretion with respect to scope of work, organizational structure, staffing, mode of operations and other management processes, coupled with close monitoring of operational involvement during performance.

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

- (1) Award follows normal procedures as set forth in 15 CFR Part 14 or 15 CFR Part 24 concerning Federal review of recipient s procurement standards and sole source procurements.

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

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

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

**E. Other Types of Agreements.** There are transactions and agreements other than grants, cooperative agreements, and procurement contracts under which DOC can enter into a relationship with outside entities. The Grants Officer, OGC (FALD, Contract Law, and General Law Divisions), Program Counsel, and OEAM can offer advice and assistance with respect to the appropriate instrument to be used in a specific set of circumstances. These agreements are sometimes referred to as Memoranda of Understanding (MOUs). The MOU format is not appropriate as a substitute for procurement contracts or financial assistance awards and is not to be used as a sole source justification for award of procurement contracts or financial assistance. The cognizant Grants Officer and FALD, or OEAM should be contacted in situations involving an agreement pursuant to the Economy Act which results in the award of financial assistance. In addition, questions about specific types of agreements may be referred to the contact offices listed.

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

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

[**Note:** There are instances when DOC operating units receive and/or transfer funds under an Economy Act transaction from or to other Federal agencies to make awards of financial

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

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

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

## 6. TYPES OF FINANCIAL ASSISTANCE FUNDS AND AWARDS

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

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

**1. Competitive Awards.** These awards are made after a solicitation of proposals has been published in the *Federal Register* and DOC has chosen one proposal over another based on merit review and the application of established evaluation and selection criteria. See Chapter 19 of this Manual for instructions in preparing *Federal Register* notices announcing the availability of financial assistance funds. Program officials are encouraged to supplement the *Federal Register* notices by also soliciting applications through Internet announcements, mailing lists, presentations at conferences, professional journals, trade association newsletters, and other media that are available and accessible to potential applicants.

**2. Institutional Awards.**

a. These awards are made with the intent to maintain a long-term partnership between DOC and the recipient for those projects established under long term planning goals and objectives common to the research and programmatic needs of both parties. Renewals may be made on a noncompetitive basis if the recipient performs satisfactorily. While this type of award is intended to accommodate a long-term relationship between DOC and recipients, the individual awards should not exceed a five-year period. The initial solicitation shall be the same as that for competitive awards. If a recipient of an institutional award is performing in an unsatisfactory manner, that recipient should generally be replaced by an applicant that is selected through full and open competition. Programs that make institutional awards must conduct periodic reviews in accordance with the provisions of Chapter 16, Section K.2., of this Manual.

b. The Grants Officer is responsible for determining whether a program is designated as an institutional award program and may determine that only one or more awards under a program are institutional awards. Institutional awards should only be established between an operating unit and a recipient for long-term projects that are common to the programmatic goals and objectives of DOC and the recipient. Other projects of long-term duration may be funded using DOC Multi-Year funding procedures prescribed in Chapter 20 of this Manual.

### 3. Noncompetitive Awards.

a. These awards are made without the benefit of competition. In those instances when noncompetitive awards are recommended for funding, complete and detailed justifications must be submitted by the Program Officer to the Grants Officer for review and approval.

Noncompetitive awards using discretionary funds for a new award are allowed in only the following situations:

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

(2) In instances where an applicant submits an application on its own initiative (not as a result of a solicitation by the funding agency), the application does not fall within the scope of a published competitive notice, and the agency determines in accordance with Chapter 8, Section F., of this Manual, that the application has merit and falls within one of the six listed categories.

b. If more than five percent (5%) of the total number of awards made under a program within one fiscal year are made on the basis of recipient initiative, the Program Officer and the Grants Officer should examine the annual *Federal Register* notice and make any corrections deemed necessary to the next annual notice so that the solicitation better reflects the goals or needs of the program.

**B. Nondiscretionary Funds.** Nondiscretionary funds are also referred to as "Congressionally-Mandated or Earmarked" funds. The statutory authority is the basis for making awards with nondiscretionary funds. The two types of awards made with nondiscretionary funds are listed below.

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

**2. Awards Limited by Statute.** These awards are made to organizations for which eligibility has been limited by law to a particular class of applicants, every one of which has been notified of the availability of funding, and every applicant that applies and that meets statutory requirements is assured an award (e.g., there may be special language in an appropriations act directing an agency to make awards to every state that applies for funding and meets certain criteria). Included in this category are NOAA programs which are listed in the *Federal Register* notice, Guidelines for Nondiscretionary Financial Assistance, as published on April 28, 1994, (59 FR 21959). Depending upon the program and its legislation, there may be competition among the eligible applicants for additional funding as an incentive for receiving proposals for innovative or pilot/demonstration projects.

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

## 7. TYPES OF APPLICATIONS

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

**A. Preapplications.** Program Offices may request preapplications for one or more of the following reasons: to establish productive communications between the Program Office and applicants; to determine an applicant's eligibility; and/or to determine how well a proposed project is likely to compete with other similar projects. One of the advantages of preapplications is to assist potential applicants by giving them realistic feedback on whether their project ideas/proposals have potential for Federal funding and to discourage applications that have little or no chance of funding. Such preapplication review is intended to allow applicants to avoid incurring significant expenditures in preparing applications that are not consistent with the operating unit's program goals and objectives.

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

2. **Preapplication Competition.** A second type of preapplication process is one where projects are eliminated. This process can be used if, and only if, the criteria used in the determination to reject projects and prevent an applicant from submitting a full application is expressly set forth in the solicitation.

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

### 1. New Competitive Awards.

a. Competitive applications are submitted pursuant to a competitive solicitation published by a DOC operating unit. These solicitations must be published in the *Federal Register* as required in Chapter 19, Section A., of this Manual. Widespread solicitation is strongly encouraged and is recommended, e.g., Internet, mailing lists, conferences, professional journals, and trade association newsletters.

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

2. **Amendments for Renewals.** For all practical purposes, competitive renewals are treated the same as a new competitive award. This type of application may be accepted unless

prohibited by the program's legislation, regulations, or other published policy. Applications for competitive renewal funding must compete with new applications and must be submitted in accordance with any established deadline dates and will be subjected to the same review requirements as competitive applications for new awards. If the application is approved for funding, the Grants Officer shall fund the extended period of support as a new funding period and an extension of the original award period.

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

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

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

**3. Amendments for Renewals.** If the application is approved for funding, the Grants Officer shall fund the extended period of support as a new funding period and an extension of the original award period. Appropriate uses of this type of amendment include renewals of nondiscretionary awards when appropriate; and renewals of awards which are funded annually based on a *Federal Register* solicitation which announced that awards would be selected for a period of more than one year but funded and extended annually, contingent upon availability of funds, satisfactory performance, and at the discretion of DOC. Noncompetitive awards of discretionary funds should not normally be given a renewal without competition. A renewal lengthens the award period and funding period while adding additional funds to the award.

**4. Amendments for Continuations.** A continuation amendment is made without competition and provides continued funding within an approved award period. A continuation extends the funding period and provides additional funding for an award period that has been previously approved, such as when multi-year funding was approved at the time of award approval. Chapter 20 of the Manual provides procedures for funding multi-year awards when full funding of the award period is not available.

**5. Extension Amendments at No Additional Cost to the Government.** Unless restricted by statute, regulations, or the terms and conditions of an award, a recipient may apply for a noncompetitive extension of the final award/funding period for up to 12 months beyond the ending date of the award/funding period as shown on the Financial Assistance Award notice. If



recommended by the Program Office and approved by the Grants Officer, such an extension is made without additional funds.

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

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

**2. Amendments for Expansion of a Project or Cost Overrun.** Applications for supplemental expansion of a current project's previously approved scope of work or to absorb a cost overrun are generally treated in the same manner as an application for new competitive awards as described in Paragraph B.1. of this chapter. If this type of amendment is recommended by the Program Officer and approved by the Grants Officer without competition, the official grant file must contain appropriate documentation to explain and justify the decision not to require competition.

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

**A. Overview.** It is the policy of DOC to seek full and open competition for award of discretionary funds. Moreover, DOC financial assistance must be awarded through a merit-based review and selection process whenever possible. This Chapter prescribes the standards and procedures to be used by operating unit officials and grants officers for reviewing, selecting, approving, and notifying applicants of funding decisions. Procedures for review and selection of construction awards will be provided in Chapter 17 which will be added at a later date. In the meantime, review and selection of applications for construction awards will be as stipulated in the *Federal Register* notice announcing the availability of Federal funds.

### **B. Review Standards.**

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

### **2. Discretionary Awards.**

a. All discretionary awards shall be subject to an objective merit review by a group of at least three professionally and technically qualified reviewers. This review is limited to technical and/or cost matters and should be separate from any programmatic review of program/policy factors which may be considered in making a selection/non-selection decision.

b. An objective merit review of financial assistance applications is intended to be advisory and is not intended to replace the authority of the program official with responsibility for deciding whether to recommend funding for an award. The merit review shall be in accordance with stated evaluation criteria set forth in the applicable program regulations, *Federal Register* notice, and/or appropriate solicitation. The merit review procedures must set forth the relationship between the reviewing individuals, or the review committees or groups, and the official who has the final decision-making authority. In defining this relationship, the program must set out, at a minimum, the decision-making and documentation processes to be followed by the authorized official responsible for selection. This should cover the procedures to be used when an adverse recommendation has been received through the objective merit review process or when selection for funding recommendations may be made out of rank order or when selection for funding differs from the recommendations resulting from the merit review process. For example, published funding priorities may affect final selection for funding.

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

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

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

b. Applications should undergo an initial screening for conformance with the minimum general requirements and any mandatory technical and administrative requirements stated in the program's regulations, *Federal Register* notices, and/or appropriate solicitation(s). The Program Office must document and maintain a record of reason(s) if any application is determined to be incomplete.

c. Applications which have successfully completed an initial screening are then subject to the objective merit review as provided in B.1. or B.2., above.

#### **4. Reviewers of Applications.**

a. The DOC shall select reviewers on the basis of their professional qualifications and expertise. Reviewers of any particular application may be any mixture of Federal or non-Federal experts, sometimes including individuals from within the cognizant program office. However, the selecting official should not be involved in the review of applications for the purpose of determining whether to recommend the application for approval. If it becomes necessary for a selecting official to review applications for this purpose, the involvement of that selecting official shall be determined after review and comment by FALD at the explicit and prior written consent of the Grants Officer, and the official grant file must contain documentation demonstrating that there is no conflict of interest. In addition, a review panel should have at least one member who is outside the chain of command of the selecting official whenever possible. Reviewers must evaluate and, in some cases score, the technical merits of applications and accompanying proposals.

b. Reviewers must comply with the requirements for the avoidance of conflict of interest which are discussed at Chapter 16, Section D., of this Manual. In addition, each reviewer shall be required to certify in writing that he or she will use the application information only for review and to treat it in confidence except to the extent that the information is available to the general public from any source without restriction as to its use. Further, each reviewer must agree to comply with any notice or restriction placed on the application. Upon completion of the review, the reviewer shall return or destroy all copies of the application and accompanying proposals (or abstracts, if any) to DOC; and unless authorized by DOC, the reviewer shall not contact the applicant concerning any aspect of the application. See Form CD-571 in Appendix A of this Manual.

c. When using experts from the private sector to review grant proposals, program officials should consider whether the Paperwork Reduction Act (PRA) will apply when recruiting reviewers. If potential reviewers are asked to supply information other than a standard resume, it

is likely that the information requested will be subject to the PRA. The appropriate information collection office should be contacted so that a determination can be made on the applicability of the PRA.

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

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

b. **Panels/Ad Hoc Committees.** A panel or ad hoc review committee can be used to obtain consensus advice or independent recommendations on the technical merits of applications. Panels including non-Federal personnel should not use consensus scoring unless they comply with the requirements of the Federal Advisory Committee Act.

c. **Federal Advisory Committees.** These committees are generally only appropriate to review financial assistance applications when required by legislation. They must be established in accordance with the Federal Advisory Committee Act. The OGC can provide advice about the Federal Advisory Committee Act. Program offices should be aware that any of the following may be deemed Federal Advisory Committees within the Act:

- (1) review groups with fixed membership and regular meetings;
- (2) formally structured review groups which elect or appoint their officers; or
- (3) review groups which provide consensus advice, by voting or scoring as a group, rather than by having each member of the group score or vote on each application as an individual reviewer.

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

[**Note:** The Program Office may also implement additional tiers of internal reviews between the independent or technical review and the final selection stage as long as the additional internal reviews are described in the *Federal Register* notice and any other alternative publications along with the evaluation and selection criteria.]

**1. Group Competition.** Based solely on independent reviewers' evaluation and scoring of each complete application which was received in accordance with the requirements of the notice, the Program Office must prepare a rank ordering of the applications. The selecting official must use the evaluation and other selection criteria published in the solicitation as the standard by which applications will be measured when making recommendations to determine successful applicants. The selecting official must prepare a package that demonstrates that the process is in compliance with the procedures published in the *Federal Register* or in the program regulations and summarizing the results of the competitive review that consists of the following documentation:

- a. Copy of authorizing legislation and appropriations act (only relevant pages);
- b. Copy of the *Federal Register* notice which solicited applications;
- c. Citation for and copy of evaluation criteria used, if not included in *Federal Register* notice;
- d. Copy of any review instructions and checklists and/or other review documents provided to the independent reviewers;
- e. List of reviewers (may be coded to protect the privacy of the reviewers);
- f. List of all applications/proposals received;
- g. List of all applications/proposals rejected and the reason(s) for rejection;
- h. List by rank order of the results of the merit review of applications/proposals by the independent reviewers, to include reviewers' scores and the average score of each application;
- i. List of applications/proposals selected and recommended for funding by the selecting official and the reason as allowed by the published criteria for selection, including justification for funding application if out of rank order;
- j. A copy of FALD comments, if any, and the Program Officer's response; and
- k. Identification of the selecting official.

**2. Individual Qualification.** Based on the reviewer evaluations of each complete application which was received in accordance with the requirements of the notice, the Program Office must adequately document the selection process. The selecting official will use the reviewer/panel evaluations and other selection criteria published in the solicitation in making recommendations to determine the successful applicants. The selecting official must prepare a package that demonstrates that the process is in compliance with the procedures published in the *Federal Register* or in the program regulations and summarizing the results of the review that consists of the following documentation:

- a. Copy of authorizing legislation and appropriations act (only relevant pages);
- b. Copy of the *Federal Register* notice which solicited applications;
- c. Copy of any review instructions and checklists and/or other review documents provided to the reviewers;
- d. List of reviewers (may be coded to protect the privacy of the reviewers);
- e. Evaluation of the application and accompanying proposal and basis for selection;
- f. A copy of FALD comments, if any, and the Program Officer s response; and
- g. Identification of the selecting official.

**D. Review Process for Applications for Competitive Awards.**

**1. Federal Register Notice.** Applications must be solicited via notice in the *Federal Register* in accordance with the Guidelines at Chapter 19, Guidelines for the Preparation of *Federal Register* Notices Announcing the Availability of Financial Assistance Funds - Requests for Applications, of this Manual.

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

**3. Grants Office Review.** The Grants Office will conduct a final review of all applications recommended for funding by the Selecting Official. The Grants Officer is the DOC official who makes the final decision for the government on whether to fund an application. The Grants Officer s final decision must be consistent with published policies, e.g., the applicant is not delinquent on a Federal debt.

**4. OGC Review.** The OGC will review grant applications and supporting documents for proposed awards where Federal funding exceeds \$100,000. The OGC will advise the Grants Officer on all matters related to law and the legal form and effect of these proposed award actions. The OGC will be available to assist and respond to questions about any individual financial assistance action.

**5. OIG Review.** The OIG will conduct pre-award screening of proposed recipients and advise the Grants Officer whether the applicant should be considered a responsible recipient or whether there are conditions which draw into question the business integrity, honesty, financial stability, or practices of the applicant and/or its key officials.

## **E. Review Process for Applications for Institutional Awards.**

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

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

**3. Periodic Reviews.** Reviews of programs that make institutional awards must be conducted at least once every five years to evaluate the effectiveness and continued desirability of the use of institutional awards in accordance with Chapter 16, Section K.2., of this Manual. The results of these reviews must be a consideration by both the Program Officer and the Grants Officer in making a determination to continue providing funding without competition to each recipient of an institutional award.

**F. Review Process for Applications for Noncompetitive Awards Made with Discretionary Funds.** The following procedures will be followed when the Program Office is considering a noncompetitive application for discretionary funding.

### **1. Program Office Review.**

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

b. If the application warrants review on a noncompetitive basis, an appropriate program official must provide to the Grants Officer for approval a written justification for the noncompetitive award. The justification for award without competition must include one or more of the conditions listed below and must provide sufficient basis for the determination(s):

(1) **Only One Source Identified.** There are instances where only one responsible applicant may be identified after a thorough search to perform the work of the proposed award. There must be a sufficient description of the search by the Program Office for a determination that the applicant is the only one identified to perform the work of the proposed award (e.g., proprietary information, substantial investment by the applicant, unique and innovative project, etc.). This includes those identified as a result of the initiative of an applicant organization where the application does not fall within the scope of a published competitive notice.

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

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

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

(5) Public Interest. Competition is not required when the Head of the Operating Unit determines in writing that it is not in the public interest in a particular case to seek full and open competition for an award.

(6) Congressional Direction. Competition is not required when the Operating Unit's Chief Financial Officer and/or Budget Officer or designee has provided notification to the Program Office that Congress has expressed its intent to fund a project and specific recipient, when known, by including language in the House Report, the Senate Report, and/or the Conference Report accompanying appropriations acts. Absent specific report language, other forms of legislative history such as floor debates and Congressional press releases independent of report language will not be considered to be persuasive authority to approve funding and cannot be used to invoke this basis for approving a noncompetitive award of discretionary funds. However, these other forms of legislative history may be acceptable for identifying the intended recipient for funding that meets the criteria for Congressional direction.

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

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

**3. OGC Review.** The OGC reviews all noncompetitive applications and supporting documentation proposed for award to advise the Grants Officer as to legal form and effect.

**4. OIG Review.** The OIG will conduct pre-award screening of proposed applicants and advise the Grants Officer whether the applicant should be considered a responsible recipient or whether there are conditions which draw into question the business integrity, honesty, financial stability, or practices of the applicant and/or its key officials.



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

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

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

3. **Grants Office Review.** In coordination with the Program Office, OGC, OIG, and other offices as appropriate, the Grants Office will conduct a final review of all applications for nondiscretionary funds that are recommended for funding by the appropriate program official. The Grants Officer is the DOC official who approves the application for funding. The Grants Officer's final decision must be consistent with published policies, e.g., the applicant is not delinquent on a Federal debt.

4. **OGC Review.** The OGC will review all nondiscretionary applications and supporting documents for proposed awards to advise the Grants Officer on all matters related to law and the legal form and effect of the proposed award actions.

5. **OIG Review.** The OIG will conduct pre-award screening of proposed recipients and advise the Grants Officer whether the applicant should be considered a responsible recipient or whether there are conditions which draw into question the business integrity, honesty, financial stability, or practices of the applicant and/or its key officials.

**H. Congressional Notification.** The OEAM is developing a database which will automate the Congressional notifications and Federal Assistance Award Data System (FAADS).

1. Until the OEAM grants automation is deployed, the following procedures should be followed: Once an award with Federal funding of more than \$100,000 is ready to be approved, the Grants Office shall provide information for the Congressional notification to OEAM. The OEAM will consolidate submissions from the Grants Offices and provide it to the Office of Legislative and Intergovernmental Affairs (OLIA). Information for awards with Federal funding of \$100,000 or less shall be provided to the appropriate Congressional affairs office within the operating unit. For multi-year awards, the amount to be announced is the initial amount to be obligated, not the total amount of the award; subsequent funding is reported when the additional funding is added to the award. The OEAM will notify the Grants Officer when notification has been completed. Information for the FAADS will be reported on a quarterly basis to OEAM for consolidation and submission to the Bureau of the Census.

2. Upon deployment of the OEAM grants automation, the following procedures should be followed: Once an award with Federal funding is ready to be approved, the Grants Office shall provide electronic information required for the Congressional notification and for the FAADS. For multi-year awards, the amount to be announced is the initial amount to be obligated, not the total amount of the award; subsequent funding is reported when the additional funding is added to the award. The Office of Legislative and Intergovernmental Affairs (OLIA) should notify Congress or other appropriate officials within two workdays that the proposed awards are pending and will be made shortly. OLIA may, at its discretion, authorize a different procedure for notifying Congress of pending awards. Three workdays after submission of the electronic information, the Grants Officer may approve the award, unless OLIA has placed a hold on the award in the database.

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

**J. Notice to Applicants.**

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

**2. Unsuccessful Applicants.**

a. After consultation with the Program Officer, the Grants Officer shall determine the best method for notifying unsuccessful applicants. These notifications must be in writing. Notification can take place in either of the following ways:

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

(2) With approval of the Grants Officer, the Program Office may notify all unsuccessful applicants that their applications are not being recommended for funding when the selecting official has decided which applications to recommend to the Grants Officer for further action.

b. Unsuccessful applications should generally be either returned to the applicant with the notification or destroyed. The policy concerning disposition of unsuccessful applications should be included in the *Federal Register* notice.

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

## 9. PRE-AWARD ADMINISTRATIVE REQUIREMENTS

**A. Application Kits.** Each DOC financial assistance Program Officer must prepare an application kit, which may be in electronic format. Application kits should include all of the information that prospective applicants need to apply for an award under the program involved. The Grants Officer should be consulted when preparing the application kit. The kit must be cleared by the Grants Officer and reviewed by FALD prior to issuance. It must also be reviewed by OEAM prior to issuance if the kit contains any program specific forms or requirements beyond those listed below. Specific application kit contents may vary; however, application kits must include the following minimum information.

1. Copy of the *Federal Register* notice(s) prepared in accordance with Chapter 19 of this Manual, or the information required in that chapter.
2. Application Forms. Program Officers must use the following OMB-prescribed standard forms, as applicable, and/or any other forms approved by DOC and OMB for inclusion in the application kit. Generally, the original and two copies of these forms are required. Additional copies of these forms and unique or program-specific forms must be approved by DOC and OMB in accordance with the requirements of 5 CFR Part 1320, Controlling Paperwork Burdens on the Public.
  - (a) Standard Form 424 - Application for Federal Assistance
  - (b) Standard Form 424A - Budget Information - Non-Construction Programs
  - (c) Standard Form 424B - Assurances - Non-Construction Programs
  - (d) Standard Form 424C - Budget Information - Construction Programs
  - (e) Standard Form 424D - Assurances - Construction Programs
  - (f) Standard Form LLL - Disclosure of Lobbying Activities
  - (g) CD-511 - Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying
  - (h) CD-512 - Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions and Lobbying
  - (i) CD-346 - Applicant for Funding Assistance
3. Information about Intergovernmental Review of Federal Programs in accordance with the provisions of EO 12372 if the program is subject to this review. The following information should be provided:

- (a) A current list of the State Point of Contacts (SPOCs), including their names, addresses, and telephone numbers;
- (b) The address to which the SPOCs should send any State process recommendations; and
- (c) The specific due date for State process recommendations (formally 60 days after the application deadline date), and a statement that the funding agency does not guarantee to accommodate or explain for State process recommendations received after that date.

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

1. Application (Standard Form 424 Series or other authorized forms) with original signature, including complete proposal with any revisions; a detailed budget narrative; a copy of the current approved negotiated indirect cost agreement (if budget includes indirect costs and the applicant has a negotiated agreement); signed Forms CD-511, CD-346, and SF-LLL as applicable.
2. Recommendation memorandum from selecting official, indicating if the award is intended to be a grant or a cooperative agreement. If the award is recommended to be a cooperative agreement, the package should include a description of the funding agency's substantial involvement. The Grants Officer will make the final decision concerning the type of funding instrument.
3. Copy of the solicitation or the justification for noncompetitive award, the original documentation of the review panel evaluations, and the selecting official's basis for determination to recommend for funding based on program priorities if not already provided in a summarized package in accordance with Chapter 8, Section C. When institutional awards are providing additional funding without competition through either a new award or an amendment, a summary including the date of the most recent report and brief description of the results of the last program review conducted in accordance with provisions of Chapter 16, Section K.2., of this Manual must be included.
4. Budget Officer or other responsible official certification (e.g., CD-435) of availability of funds.
5. Credit report, if applicable.
6. Copy of all pertinent pre-award correspondence with the applicant.

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

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

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

a. The allowability and necessity for individual cost categories;

b. The reasonableness of amounts estimated for necessary costs;

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

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

3. In rare instances where complete funding is not available for a proposed award at the time of funding approval, the award document will include a special award condition regarding the award being made contingent upon the availability of prospective funding and a written justification from the Grants Officer for proceeding despite the lack of complete funding, which will be placed in the official award file. If complete funding is not available, the portion of the time being funded will need a scope of work that represents an increment of meaningful work. Also, see Chapter 20 of this Manual for establishing multi-year awards funded on an incremental basis.

**D. Costs.** Costs under a DOC financial assistance award must be in accordance with the applicable cost principles.

**1. Cost Sharing or Matching Funds.** Cash and in-kind contributions that are included in the budget of the award must be valued in accordance with the applicable administrative requirements and are subject to the appropriate cost principles. In accordance with provisions of Public Law 95-134, Title V, § 501 (1977), as amended (48 U.S.C. 1469a), DOC has determined that any requirement for local matching funds under \$200,000 (including in-kind contributions) to be provided by American Samoa, Guam, the Virgin Islands, and the Northern Mariana Islands shall be waived, notwithstanding any other provision of law. Any matching funds otherwise required by law to be provided by government entities of an insular area may be waived at the discretion of the operating unit.

**2. Direct Costs.** Costs that are directly related and can be traced to the cost of the project being supported and that are within approved budget categories may be charged to the award. For example, if the budget lists costs only for Personnel, Fringe Benefits, Supplies, Equipment,

and Travel, the recipient is not allowed to charge to the award costs for Contracting or Consultants without the prior written approval of the Grants Officer.

**3. Federal Employee Expenses.** An agency is generally barred from accepting funds from a recipient to pay transportation, travel, or any other expenses for any Federal employee unless specifically approved in the terms of the award. Use of award funds (Federal or non-Federal) or the recipient's provision of in-kind goods or services, for the purposes of transportation, travel, or any other expenses for any Federal employee may raise appropriation augmentation issues. In addition, Department policy prohibits the acceptance of gifts, including travel payments for federal employees, from recipients or applicants regardless of the source. Program officers and Grants Officers should contact the OGC for guidance on such issues.

**4. Indirect Cost Rates.** Indirect cost rates will generally be in accordance with negotiated indirect cost rate agreements which are established by the cognizant agency for the entire Federal Government. Program Officers should consult with the Grants Officer before limiting indirect costs. Any proposed limitation must be published in the *Federal Register* or in a program regulation. The recipient should be advised to provide OIG with a copy of its proposal for a negotiated rate when DOC is cognizant agency. (For awards subject to OMB Circular A-21, the term indirect costs has been replaced with facilities and administrative costs. )

**5. Pre-Award Costs.** Pre-award costs may only be considered where costs are incurred prior to the award, but after program authority has been enacted and the appropriation becomes available, unless a contrary indication exists in the language or legislative history of the program statutory authority or appropriation. If pre-award costs are incurred before the funding becomes available, but after program authority exists, pre-award costs may be awarded on a case-by-case basis, depending on statutory language, legislative history, or other particular factors, such as applicable program regulations. Pre-award costs incurred before both program authority and funding are available may generally not be funded retroactively. Questions about availability of appropriations for pre-award costs should be directed to the OGC.

a. Approval of pre-award costs should be kept to a minimum. Generally, the period for such costs should not exceed 90 days prior to the start of the award period.

b. When a request for approval of pre-award costs is required, an applicant should provide a written request to the Program Officer at the earliest possible time. The request should contain the following information: Pre-award time period, line item budget for the period, narrative description of the task to be completed, and a compelling justification of why the government should approve pre-award costs. The Program Officer should analyze the request and provide a recommendation to the Grants Officer. The Grants Officer will review the recommendation and request. If the pre-award request is disapproved, the Grants Officer will notify the recipient in writing. If the request is approved, notice will be incorporated into the award document.

**6. Profit or Fee.** Profit or management fees should only be paid to for-profit or commercial organizations and are allowable at the discretion of each operating unit up to seven percent (7%) of total estimated direct costs. Profit or fee may not be included in any overhead charge. In accordance with 15 CFR § 24.22, state and local governments or their subgrantees may not

receive a profit or fees from DOC grant funds. The DOC discourages paying fees to non-profit organizations. Whether characterized as fees or profits, receiving funds over and above the costs related to the scope of work funded under financial assistance awards could give the appearance of a conflict with the purposes for which non-profit organizations are generally established and could also raise questions concerning the tax exempt status under which they operate. Any decision to include fees to a non-profit organization must be reached jointly by the Program Officer and the Grants Officer, and the justification must be fully documented in the official award file. Prior to issuance of any award to a non-profit organization which includes fees, the Grants Officer should consult with FALD and OEAM.

## **7. Program Income.**

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

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

c. Recipients have no obligation to the Federal Government with respect to program income earned from license fees and royalties copyrighted material, patents, patent applications trademarks, and inventions produced under the award, unless otherwise required by statute, agency regulations, or the terms and conditions of the award. In particular, inventions made under an experimental, developmental, or research award must comply with the requirements of 35 U.S.C. § 18 and 37 CFR Part 401.

d. The disposition of program income shall be in accordance with the applicable Federal administrative requirements and will be specified in the terms and conditions of each award. See 15 CFR § 14.24 or 15 CFR § 24.25, as applicable.

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

**F. Applicant s Management and Financial Capabilities.** DOC policy is to make awards to applicants and recipients who are competently managed, responsible, capable, and committed to achieving the objectives of the awards they receive. It is essential, therefore, that precautions be taken to award grants only to reliable and capable applicants who can reasonably be expected



to comply with award requirements. Therefore, the following pre-award screening of applicants for financial assistance awards will be conducted as appropriate.

**1. Credit Checks.** A credit check will be performed on individuals, for-profit, and non-profit applicants. In instances where applicants are delinquent in their Federal obligations, including Federal tax liens, or if any other negative findings are reported, the Grants Officer must investigate those findings and determine whether an award is justified despite negative findings or whether the applicant should be designated as a high-risk recipient (see Section G. of this chapter). A copy of the justification for funding despite negative findings signed by the Grants Officer, credit report, and description of actions taken to investigate/resolve negative findings concerning nonresponsibility determinations must be included in the official award file. The OIG will be consulted with respect to assessing the applicant's financial condition and capacity. The final decision will rest with the Grants Officer. Credit reports should generally be obtained through the Federal Supply Schedule negotiated by the GSA. A listing of contractors that provide collection services under the Treasury Debt Collection contract can be found at the Department of the Treasury's Web site.

**2. Delinquent Federal Debts.** A review will be conducted of the accounts receivable listings of each DOC Finance Office and of the credit report for delinquent debts to the Federal Government. In addition, the Department of Housing and Urban Development's Credit Alert Interactive Voice Response System (CAIVERS) may be used to ensure that applicants are not delinquent on Federal debt. No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either:

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

**3. Name Check Reviews.** Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management honesty or financial integrity. See Chapter 21, Guidelines and Procedures for Name Check Reviews.

**4. List of Parties Excluded from Procurement and Non-Procurement Programs.** The list maintained by the GSA of parties excluded from Federal procurement and non-procurement programs will be checked to assure that the recipient has not been debarred or suspended on a government-wide basis from receiving financial assistance. No awards shall be made to applicants who have been excluded from participating in Federal financial assistance programs. See 15 CFR Part 26.

**5. Past Performance.** Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding if a determination of nonresponsibility is made

by the Grants Officer, based on recommendation of an appropriate program official (see G.3 below).

**6. Pre-Award Accounting System Surveys.** The Grants Office, in cooperation with the OIG, may arrange for a pre-award survey of the applicant's financial management system in cases where the recipient has had no prior Federal support, the operating unit has reason to question whether the financial management system meets Federal financial management standards, or the recipient is considered high-risk. If a pre-award survey is not conducted, a special award condition should be incorporated into the award to require the recipient to obtain a certification from a certified independent public accountant that the recipient's accounting system is adequate to meet the Federal financial management standards.

**G. High-Risk Recipients.**

1. The Grants Officer is charged with determining whether an applicant is sufficiently responsible to receive Federal financial assistance in accordance with the requirements established in 15 CFR § 14.14 or 15 CFR § 24.12, as applicable. The Grants Officer should use the following indicators to determine whether a high risk designation is warranted.

a. **Financial Instability.** Circumstances that may be relied on as indications of financial instability include factors that contributed to bankruptcy or insolvency, or substantial financial dependency on Federal support. A decision not to make an award only on the basis of bankruptcy or insolvency may be in violation of 11 U.S.C. 525(a), which prohibits discrimination against organizations that have filed such actions;

b. **Inadequate Internal Controls.** Examples of inadequate internal financial or administrative controls are the inability to comply with the financial management standards or procurement standards in OMB and Treasury circulars which are grave enough to raise serious doubts whether the entity can properly account for Federal funds or use them for their intended purpose; delinquency in payments to the Internal Revenue Service for Federal income and Federal Insurance Contributions Act taxes withheld from employees; or delinquency in repaying a receivable to another Federal agency;

c. **Unsatisfactory Performance under Other Federal Awards.** Examples of unsatisfactory performance include material violations of award conditions, present debarment, suspension, or voluntary exclusion from Federal programs, termination of a previous award for cause, unsatisfactory or incomplete performance under a prior or current award, or failure to repay a debt owed to the Federal Government;

d. **Irresponsible Officials or Key Employees.** Examples of possible lack of responsibility are when officials or key employees of an entity responsible for administering a Federal grant:

(1) Have been convicted of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(2) Have been convicted of any other offense indicating a lack of business integrity or business honesty that raises questions regarding the appropriateness of selecting the organization for Federal funding; or

(3) Are the subject of adverse information as revealed through the name check procedure which reflect significantly on the applicant's honesty or financial integrity.

e. Unsatisfactory Audits. An issue of the applicant's responsibility may arise when prior audits, which have been resolved, indicate a lack of adherence to administrative and cost accounting guidelines, or a failure to achieve programmatic objectives resulting in disproportionately high disallowances;

f. Failure to file Form SF-LLL, "Disclosure of Lobbying Activities," if required;

g. Failure to file Form SF-424B or SF-424D, as applicable; and

h. Other adverse information about the responsibility of the entity.

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

a. not make the award;

b. delay the award until conditions are corrected; or

c. consider the recipient to be "high-risk" and make the award with special award conditions to protect the Federal Government's interest, and inform the recipient of the corrective action required to remove the special award conditions. See I.3.c.(2) of this chapter for guidance. See also 15 CFR § 14.14 or 15 CFR § 24.12, as applicable.

3. In any instance where a Grants Officer intends to deny, or a program office fails to recommend, a grant or cooperative agreement to an applicant on the basis of pre-award concerns relating to the applicant's present responsibility, the applicant must be given notice of the Department's determination. Such a high-risk determination relates solely to the applicant's present responsibility and the particular award for which the determination is being made, and does not affect the applicant's eligibility for future awards. The notice to the applicant must provide the applicant an opportunity to submit information showing that the Department's determination is in error or otherwise warrants reconsideration. Once an adverse determination has been made, an award may be made to the next appropriate applicant. Whenever a high risk determination is made which will deny an award based on responsibility concerns, and the denial is part of a long-term plan to disqualify the applicant, DOC's formal debarment and suspension regulations (15 CFR Part 26) must be followed. These regulations provide procedures for excluding organizations from participating in Federal procurement and nonprocurement activities on a government-wide basis. Failure to provide the appropriate procedures may expose DOC to a valid claim of de facto debarment based on an argument by the applicant that it has been denied due process of law. As a practical matter, government-wide debarment and suspension under 15

CFR Part 26 are used only in the most serious cases, such as indictment for and/or conviction of criminal offenses.

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

- a. require the recipient to correct the conditions; and
- b. consider the recipient to be "high-risk" and assign special award conditions to protect the Federal Government's interest (see Subparagraph I.3.c.(2)) of this chapter for guidance; or
- c. suspend or terminate an award already made. Such action should be taken only after the recipient has been afforded adequate due process as noted in G.3. of this chapter.

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

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

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

**I. Preparation of Financial Assistance Award.**

**1. Uniform Administrative Requirements.** The uniform administrative requirements that apply to a specific grant depend on the type of recipient.

- a. "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," 15 CFR Part 24, applies to state, local, and Federally-recognized Indian tribal governments.

b. Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, Other Non-Profit, and Commercial Organizations, 15 CFR Part 14, applies to institutions of higher education, hospitals, other non-profit, and commercial organizations. This part also applies to grants and agreements awarded to foreign governments, organizations under the jurisdiction of foreign governments, and international organizations unless otherwise determined by the Grants Officer after coordination with the appropriate program officials.

**2. Cost Principles.** The cost principles that apply to a specific grant also depend upon the type of recipient.

a. "Cost Principles for State and Local Governments," OMB Circular A-87, applies to state, local, and Federally-recognized Indian tribal governments.

b. "Cost Principles for Educational Institutions," OMB Circular A-21, applies to public and private institutions of higher education.

c. "Cost Principles for Non-Profit Organizations," OMB Circular A-122, applies to non-profit organizations.

d. "Contracts with Commercial Organizations," 48 CFR Part 31, applies to for-profit organizations and individuals.

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

**3. Award Document.** The Form CD-450, "Financial Assistance Award," or Form CD-451, "Amendment to Financial Assistance Award," shall be used as the award documents for all grants and cooperative agreements funded by DOC. A copy of each of these forms is in Appendix A of this Manual. The following must be included in every award:

a. Award Period.

(1) Awards must include a start date and end date. Award periods should not exceed five (5) years.

(2) The beginning of the award period should not ordinarily precede the Grants Officer's signature date (award date). In order to avoid delays that could possibly jeopardize the success of a project or possibly result in the recipient putting itself at risk by incurring costs without having a properly executed award document, applications should be solicited and processed in a timely manner.

(3) Procedures for funding proposals which include a scope of work and budget incorporating more than one year of activity when only a portion of the entire amount of Federal funding is available are found in Chapter 20, "Multi-Year Funding Procedures."

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

c. Special Award Conditions. In addition to the laws, regulations, OMB circulars, and DOC ST&Cs controlling the administration of a grant, special award conditions may also be imposed when justified by circumstances. Special award conditions imposed after the award has been made must be agreed to by both the recipient and the Federal Government unless Federal law or regulation provides the Federal Government with the right to impose special award conditions under the grant in accordance with 14 CFR § 14.14 or 15 CFR § 24.12, as applicable. Generic or Department-wide special award conditions found in Appendix B should be used, as applicable, in all DOC grants and cooperative agreements. However, information listed in Generic or Department-wide special award conditions numbered 2, 3, 4, and 5 (contact names) may be provided to the recipient in the letter transmitting the award and included in the official award file. Other special award conditions may include the following:

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

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

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

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

(2) In the event that the applicant or recipient is considered as "high-risk," the Grants Officer will notify it (in writing and in as timely a fashion as possible) of:

(a) The nature of the special award conditions or restrictions and the basis on which they are being imposed, which may include:

1 Payment only on a reimbursement basis;

2 Withholding authority to proceed to the next phase of activity until receipt of evidence of acceptable performance within a given funding period;

3 Requiring additional, more detailed financial reports;

- 4 Additional project monitoring;
- 5 Requiring that technical or management assistance be obtained;
- 6 Establishing additional requirements for prior approval; or
- 7 Prohibiting conduct of research involving human and/or animal subjects until certain requirements are met.

(b) The corrective action which must be taken by the applicant or recipient before the special award conditions will be removed and the time allowed for taking the action; and

(c) An explanation of how the applicant or recipient may request reconsideration of the special award conditions or restrictions being imposed.

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

d. Standard Terms and Conditions.

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

[**Note:** Section L.08 of the DOC ST&Cs (October 2001) implements EO 13202, Preservation of Open Competition and Government Neutrality Towards Government Contractors Labor Relations on Federal and Federally Funded Construction Projects. On January 25, 2002, OMB issued guidance on project labor agreements to all Executive branch agencies that administer Federal grants that are subject to the requirements set forth in EO 13202, as amended. Specifically, OMB advised that the EO has been the subject of litigation in Federal courts, and an appeal is currently pending in the U.S. Court of Appeals for the D.C. Circuit. See Building and Construction Trades Department v. Joe M. Allbaugh, 172 F. Supp. 2d 138 (D.D.C. 2001), which held that the EO was not legally authorized. The OMB further advised that, based upon guidance received from White House Counsel and from the Department of Justice, agencies that administer Federal grants subject to EO 13202, as amended, should immediately cease implementation of the EO's requirements pending judicial resolution of the appeal. Since EO 13202 was already included as part of the DOC ST&Cs (October 2001), the following special award condition must be included in all DOC awards: Pending judicial resolution of a legal challenge (see Building and Construction Trades Department v. Joe M. Allbaugh, 172 F. Supp. 2d 138 (D.D.C. 2001)) to Executive Order 13202, as amended, implementation of the requirements of Section L.08 of the Department of Commerce Financial Assistance Standard Terms and Conditions (October 2001), Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects, will be suspended under this award. ]

(2) EDA issues separate standard terms and conditions for its construction awards and revolving loan fund awards. EDA's standard terms and conditions are derived from DOC ST&Cs in consultation with and after timely consideration and comment from OEAM and FALD.



## 10. POST-AWARD ADMINISTRATION REQUIREMENTS

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

1. The original signed application forms, as applicable (SF-424, SF-424A, SF-424B, SF-424C, and SF-424D, or OMB approved alternative to these forms). In addition, the official file must include required DOC forms including, but not limited to, the CD-346, CD-478, CD-511, SF-LLL, when applicable.
2. The original applicant proposal, budget, and any amendments.
3. Documentation of the analysis upon which the award selection was based including evaluations, scores, justifications, etc. This documentation must clearly demonstrate that the selection procedures have met the requirements contained in Chapter 8 of this Manual.
4. Internal review and clearance documents including all required signatures from the budget office, legal counsel, OIG, grants office, and any other pertinent reviews and/or concurrences determined to be necessary by the Grants Officer.
5. Name check documents, when applicable, including form CD-346 and follow up documents provided by the OIG.
6. Signed certification that all required and applicable pre-award administrative procedures were completed. These procedures include but are not limited to the following:
  - a. Assurance that the recipient was competitively selected by an independent review process or that appropriate noncompetitive review procedures were followed in accordance with Chapter 8 of this Manual and that the official award file contains the required documentation with respect to review and selection procedures;
  - b. Review of credit reports when negative findings are reported;
  - c. Verification that the applicant has no outstanding delinquent DOC receivable or debt;

- d. Consideration of results of name check review;
  - e. Review of the GSA "Lists of Parties Excluded from Federal Procurement or Nonprocurement Programs" to determine whether the applicant has been debarred, suspended, or otherwise excluded from receiving financial assistance;
  - f. Verification that a completed Form CD-511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying, is present;
  - g. The appropriate funding instrument was used in a particular transaction, i.e., grant, cooperative agreement, or contract;
  - h. Review of past performance evaluations if the applicant has received past funding under the program;
  - i. Review of any known unresolved or unimplemented audit findings over six months old;
  - j. Review of accounts receivable listings to determine if the applicant has delinquent debts with the Department; and
  - k. Assurance that the proposed award was coordinated with any other operating units or Federal agencies, as appropriate.
7. Original fully executed award documents and any amendments with all attachments (except OMB Circulars and applicable uniform administrative requirements, which will be listed on the award document).
8. Memoranda of negotiations with the recipient, if applicable, and correspondence between the recipient and the organization unit in the pre-award and post-award phases.
9. Advance understandings or waivers of generally applicable award requirements.
10. Documentation when delegation of authority is authorized in accordance with Chapter 4, Section A.2., of this Manual. The following is the minimum documentary information which must be a part of the official file when the Grants Officer exercises this delegation of authority:
- a. The specific section of 15 CFR Part 14 for which a less restrictive requirement is imposed or for which a case-by-case exception is made;
  - b. The reason/justification for approval of the less restrictive requirement or the exception; and
  - c. The special award condition included in the grant or cooperative agreement to provide the less restrictive requirement or exception.

11. Performance/program, financial, patent, property, and other reports submitted by the recipient and all written evaluation/clearance by the Program Officer or other officials.
12. Property records, including any notification(s) relating to disposition of property.
13. Recipient requests for changes requiring amendments, and all correspondence and evaluations of the proposed changes.
14. Project audit reports, including documentation of actions taken , the resolution and implementation of audit findings.
15. Close-out documents including, but not limited to, final financial reports, progress, property, patent, copyright, and other close-out reports required under the terms and conditions of the award.
16. Other correspondence regarding the project including, but not limited to, interagency and Congressional correspondence.
17. Documentation of any agreements to transfer funds from other agencies, including but not limited to, interagency agreements pursuant to the Economy Act or other special agreements. The file must clearly reference the authority under which funds are transferred, the transferring agency s authority to transfer the funds and its ability to award financial assistance for such a project, and DOC s authority to accept the funds and to award funds for that specific project.

**B. Federal Assistance Awards Data System (FAADS).** FAADS is a central collection of selected, computer-based data on Federal financial assistance award transactions, compiled quarterly. All departments and major agencies of the Executive Branch of the Federal Government with grant making authority report to FAADS. The information in the FAADS is used to provide the Congress, the Executive Branch, other public agencies, and private groups with data on the geographic distribution of Federal funds. Policy oversight for FAADS is provided by OMB. All final decisions concerning FAADS, its operation, comprehensiveness, and coverage rest with OMB. The Bureau of the Census has been designated by OMB as the executive agent for FAADS. The FAADS is required by 31 U.S.C. § 6102(a). The objective of the FAADS is to provide Congressional and state government officials with comprehensive, timely information about financial assistance awards made to public and private recipients. Grants Officers are responsible for submitting information in accordance with the FAADS Users Guide to the OEAM. OEAM will oversee the submission of a consolidated DOC FAADS report to the Bureau of the Census. The Office of Systems and Technology provides OEAM technical support for the FAADS database.

**C. Costs Under DOC Awards.** Costs under DOC awards shall be governed by the applicable uniform administrative guidelines, cost principles, and award terms and conditions.

**D. Amendments.** DOC awards can only be amended, changed or modified by the cognizant Grants Officer unless the Grants Officer has delegated the authority to approve no-cost

amendments. No other DOC official is authorized to make either cost or no-cost amendments, changes, or modifications to awards.

**E. Project Monitoring.** The purpose of project monitoring is to ensure that the terms and conditions of awards are fulfilled. Project monitoring shall be the joint responsibility of the Grants Officer, Program Officer, award recipient, and/or their designees. Monitoring may take the form of site visits, written and/or oral reports, meetings, or any other form of communicating deemed appropriate by the Grants Officer for keeping apprized of project progress. See 15 CFR §§ 14.51-52 and 15 CFR §§ 24.40-41. Grants Offices and Program Officers may request audit assistance from the OIG in fulfilling their monitoring responsibilities. Allegations of fraud, waste, and abuse may also be referred to the OIG or made anonymously through the OIG Hotline at 1-800-424-5197.

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

## 11. ENFORCEMENT

**A. Overview.** The Grants Officer, in consultation with the Program Office, is authorized to take appropriate actions if recipients fail to meet their obligations under awards. Proposed suspensions and terminations must be reviewed by FALD prior to execution. Every grant and cooperative agreement contains a provision for suspension and/or termination of the award for deficient project performance, poor financial management, non-payment of accounts receivable, and/or other non-compliance or deficiency problems. Suspension or termination of an individual award is not an action covered by the provisions of 15 CFR Part 26, Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants).

[**Note:** On January 25, 2002, OMB issued guidance on project labor agreements to all Executive branch agencies that administer Federal grants that are subject to the requirements set forth in EO 13202, as amended. Specifically, OMB advised that the EO has been the subject of litigation in Federal courts, and an appeal is currently pending in the U.S. Court of Appeals for the D.C. Circuit. See Building and Construction Trades Department v. Joe M. Allbaugh, 172 F. Supp. 2d 138 (D.D.C. 2001), which held that the EO was not legally authorized. OMB further advised that, based upon guidance received from White House Counsel and from the Department of Justice, agencies that administer Federal grants subject to Executive Order 13202, as amended, should immediately cease implementation of the EO's requirements pending judicial resolution of the appeal. The OMB advised that agencies will be informed at some later date when it is appropriate to begin implementation of the EO. Since EO 13202 was already included as part of the DOC ST&Cs (October 2001), and the October 1, 2001 *Federal Register* notice, Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements, enforcement of the provisions of EO 13202 will be suspended pending judicial resolution with regard to existing awards which contain the requirements of the EO.]

**B. Enforcement.** Enforcement actions may include, but are not limited to, discussions of corrective actions needed, written correspondence delineating needed actions; imposition of high-risk special award conditions; suspension of the award, suspension of payment, or both; termination of the award; or debarment and suspension of the recipient pursuant to 15 CFR Part 26. See 15 CFR § 14.62 or 15 CFR § 24.43, as applicable.

**1. High-Risk Special Award Conditions.** If a recipient materially fails to comply with the terms and conditions of an award, the Grants Officer may impose high-risk special award conditions pursuant to 15 CFR § 14.14 or 15 CFR § 24.12. Such special conditions may include placing the recipient on reimbursement only, or other requirements unique to the circumstances at hand. The recipient must be notified of the high-risk special award conditions and informed of corrective actions necessary to remove the restrictions in accordance with 15 CFR § 14.14 and 15 CFR § 24.12.

**2. Suspension of Payments.** Suspension of payments is an enforcement action available to the Grants Officer when he/she determines it is necessary to temporarily withhold payments of funds pending correction of identified deficiencies by the recipient or more severe enforcement action by the Grants Officer. The imposition of a suspension of payments does not halt activities under an award and the recipient may continue to incur costs during the suspension of payments. Only the Grants Officer is authorized to suspend payments under an award or lift the suspension once it is imposed. The recipient must be notified of the suspension in writing. At a minimum, the notice must be sent by certified mail, must state that the Department is imposing suspension of payments, the reason(s) why, and what corrective action is necessary by the recipient to remedy the situation. If immediate action is not necessary to protect the government's interest, the Grants Officer should provide 30 days notice, informing the recipient that, unless information is received within the 30 days establishing compliance by the recipient with the requested remedial actions, the Department will proceed with the suspension of payments. A suspension of payments may be imposed regardless of whether the recipient has submitted any pending payment requests. If specified corrective actions are not taken, the Grants Officer may, after considering the best interests of the government, take more severe enforcement action, including termination of the award.

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

**4. Termination for Cause.** The Grants Officer may terminate any DOC award for material noncompliance. Material noncompliance includes, but is not limited to, violation of the terms and conditions of the award; failure to perform award activities in a satisfactory manner; improper management or use of award funds; or fraud, waste, abuse, mismanagement, or criminal activity. All termination for cause actions must be documented in the official award file in writing. The recipient must be notified of the termination action in writing using the same minimum requirements listed under a suspension in Paragraph 1. above if the suspension did not precede the termination action. See 15 CFR § 14.61(a)(2) and (3) or 15 CFR § 24.43, as applicable.

**5. Termination for Convenience.** In financial assistance, the Federal Government may not terminate an award unilaterally for the convenience of the government. However, the Grants Officer and the recipient may agree that an award should be terminated for convenience when both DOC and the recipient agree that continuing the project would not be of further benefit. All termination for convenience actions must be documented in the official award file in writing. The Grants Officer and the recipient must agree in writing to the conditions of the termination for convenience. See 15 CFR § 14.61(a) and 15 CFR § 24.44.

**6. Debarment and Suspension of a Recipient.** Suspension and debarment of a recipient are actions taken pursuant to 15 CFR Part 26 which implements EO s 12549 and 12689. The actions are intended to suspend or debar a recipient organization from participating in any Federal program, government-wide. Suspension and debarment are imposed, not as punishments but to protect the interests of the government. The integrity or responsibility of an applicant or recipient is at issue in a suspension or debarment, and such action is imposed only in egregious circumstances; e.g., when a recipient or applicant has been indicted and/or convicted of a criminal offense. All of the regulatory requirements of 15 CFR Part 26 must be met before a recipient organization can be debarred or suspended from participation in Federal programs. This action must be distinguished from suspension of an individual award by a Grants Officer as discussed above. The FALD shall review all proposed suspensions and debarments under 15 CFR Part 26.

## 12. AWARD CLOSE-OUT

An award expires at midnight local time on the date which is listed on the award document as the End/Completion Date. Immediately following the expiration of an award, steps must be taken to ensure that activity is complete and that DOC and the recipient have met all requirements imposed by applicable laws, regulations, OMB circulars, and award terms and conditions. General procedures for award close-out are contained in 15 CFR § 14.71 and 15 CFR § 24.50.

**A. Responsibilities.** Proper award close-out is required for all DOC financial assistance awards.

1. The Grants Officer has overall responsibility for ensuring that the award is properly closed-out and the necessary documentation is included in the official award file. Once all documentation has been received and no further action is required, the Grants Officer shall notify the recipient in writing, with a copy of the notification to the Program Officer, that the grant has been satisfactorily closed.
2. The Grants Officer or designee is responsible for notifying the recipient when the award is close to completion, and for reviewing and evaluating the final performance, property, and patent reports as applicable.
3. When applicable, the Grants Officer will provide the recipient with instructions for disposition of property loaned to the recipient by the Federal Government or purchased by the recipient with grant funds.

**B. Unobligated Funds.**

1. If at the completion of an award period, the recipient has an unobligated balance of funds on hand, those funds shall be returned to the Federal Government immediately. If the funds are not returned by the recipient in a timely manner, an account receivable may be established and billed to the recipient. Interest, penalties, and administrative charges shall be assessed, as appropriate.
2. Recipients with outstanding accounts receivable established (e.g., to collect unobligated funds) are subject to debt collection procedures at Chapter 14, Section C., of this Manual.

**C. Deobligation of Funds.** Within thirty (30) calendar days of receipt of the final SF-269, "Financial Status Report," showing no unliquidated obligations, the Grants Officer shall notify the Finance/Accounting Officer to deobligate the unobligated balance of funds not disbursed to the recipient. No funds will be deobligated unless requested by the Grants Officer.



**D. Retention of Records.**

1. Generally, a recipient is required to retain records relating to a particular grant for three (3) years from the date of submission of the final financial report. In cases where litigation, claim or an audit is initiated prior to expiration of the three-year period, records must be retained until completion of the action and resolution of any issues associated with it or the end of the three-year retention period, whichever is later. (See 15 CFR § 14.53 or 15 CFR § 24.42 for specific records retention requirements.)

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

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

b. Provide appropriate assurances of government access thereto.

## 13. AUDITS

**A. Audit Requirements.** OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations, implements the Single Audit Act Amendments of 1996, establishing uniform audit requirements for non-Federal entities that administer Federal awards. To the extent that audits performed in accordance with OMB Circular A-133 meet DOC needs, DOC shall rely upon and use such audits. In accordance with 15 CFR 14.26 (c) and (d), for-profit hospitals, commercial, and other organizations not covered by the audit provisions of OMB Circular A-133 shall be subject to the audit requirements as stipulated in the award or sub-award document. State, local government, and non-profit recipients that expend less than \$300,000 annually in Federal awards are exempt from Federal audit requirements but must follow the guidance in OMB Circular A-133 § 200 (d), unless a program-specific audit is required by a special award condition and funded by the award.

**1. Organization-Wide Audits.** Organization-wide audits shall be performed in accordance with the Single Audit Act Amendments of 1996, as implemented by OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations. Recipients that are subject to OMB Circular A-133 and that expend \$300,000 or more annually in Federal awards shall have an organization-wide audit performed in accordance with OMB Circular A-133 § 500 except when they qualify and elect to have a program-specific audit performed in accordance with OMB Circular A-133 § 235. Organization-wide audits will generally be conducted annually.

**2. Program-Specific Audits.** Program-specific audits are allowable under OMB Circular A-133 in certain circumstances in lieu of the organization-wide audit. Recipients expending \$300,000 or more in a year under only one Federal program under which the statutes, regulations, or terms of the award do not require a financial statement audit, may elect to have a program-specific audit conducted in accordance with OMB Circular A-133 § 235. A program-specific audit may not be conducted for research and development unless all of the Federal awards expended were received from the same operating unit, or the same operating unit and the same pass-through entity, and the Grants Officer or appropriate representative of the pass-through entity in the case of a subrecipient, approves in advance a program-specific audit. Program-specific audits will be conducted annually.

**3. Submission of Audit Report and Data Collection Form.**

a. Recipients having audits conducted in accordance with OMB Circular A-133 shall submit to the Federal Audit Clearinghouse:

(1) the data collection form prescribed by OMB Circular A-133, § 320(b);

(2) One copy of the audit report for the Clearinghouse to retain as an archival copy; and

(c) One copy of the audit report for each Federal awarding agency, when the Schedule of Findings and Questioned Costs discloses audit findings related to Federal awards that the Federal

agency provided directly, or the Schedule of Prior Audit Findings reported the status of an audit finding related to a Federal award that a Federal agency provided directly.

b. The address for the Federal Audit Clearinghouse is:

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

**B. Other Audits.** An audit of an award may be conducted at any time as indicated in the DOC ST&Cs. The following is a list of other audits that may be required by DOC.

1. **Audits of Commercial Organizations, Sole Proprietors, and Individuals.** A for-profit organization, sole proprietor, or individual receiving a DOC award exceeding \$100,000 in Federal funding must have a program-specific audit performed. The DOC award must include a line item in the budget for the cost of the audit. If DOC does not have a program-specific audit guide available for the program, the auditor should follow generally accepted government auditing standards and the requirements for a program-specific audit as described in OMB Circular A-133 § 235. A copy of the program-specific audit shall be submitted to the Grants Officer and to the DOC OIG at the following address:

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

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

3. **Audit Required by the Award.** When an audit is required under a special award condition, the recipient will usually make the arrangements for the audit. The audit shall be performed in accordance with a program-specific audit guide, if one is available for that program, or generally accepted government audit standards and the requirements for a program-specific audit as described in OMB Circular A-133 § 235. The recipient shall submit copies of program-specific audits in accordance with the guidance in the program-specific audit guide. If no guide is available, a copy of the audit shall be submitted to the Grants Officer at the address specified in the award document and to the DOC OIG at the following address:

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

**C.     OIG Access to Recipient Records.** Under the Inspector General Act of 1978, as amended, 5 U.S.C. App. 3, § 1 et seq., an audit of the award may be conducted at any time. The Inspector General of the DOC, or any of his or her duly authorized representatives, shall have access to any pertinent books, documents, papers and records of the recipient, whether written, printed, recorded, produced or reproduced by any mechanical, magnetic or other process or medium, in order to make audits, inspections, excerpts, transcripts or other examinations as authorized by law.

**D.     Audit Resolution.**

1.     In accordance with DAO 213-5, Department and operating unit personnel shall act promptly to resolve both the financial and nonfinancial issues raised in an audit report. Comments, arguments, and evidence (if any) submitted by the auditee and the operating unit shall be considered in resolving these issues. A DOC decision on the resolution of audit findings and recommendations will be made within 180 days of the issuance of an OIG audit report or OIG transmittal letter including findings and questioned costs reported by an independent accountant in accordance with the procedures and within the specified timeframes identified in DAO 213-5.

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

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

4.     All disputes arising from audit resolution shall be decided in accordance with the appeal procedures and specified time frames outlined in DAO 213-5, and DOC's "Policies and Procedures for Resolution of Audit-Related Debts," as published in the *Federal Register* on January 27, 1989 (54 FR 4063). The appeal procedure is the last opportunity for auditees to provide evidence to support their contentions. The DOC will not accept any submission from a recipient regarding an appeal after the established deadline, unless requested by the Grants Officer, the OIG, or the OGC. After the Department renders a decision on an appeal, there are no other administrative appeals available within DOC.

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

**E. Audit Implementation.** Audit follow-up and implementation shall be conducted in accordance with the requirements of OMB Circular A-50, Audit Follow-up and the Inspector General Act Amendments of 1988 as implemented for the Department by DAO 213-5.

## 14. DEBT MANAGEMENT

**A. Establishment of a Debt.** Grant-related debts are generally established as a result of an audit resolution. However, a recipient may be billed for other reasons, such as retention of excess cash on hand or failure to meet cost sharing required by the award document. When a recipient is to be billed, the Grants Officer will provide proper notification to the recipient and will request that the appropriate accounting office bill the recipient.

**B. Delinquent Federal Debts.** It is the policy of the Department that no new award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until:

1. The delinquent account is paid in full;
2. A negotiated repayment schedule is established and at least one payment is received; or
3. Other arrangements satisfactory to the Department are made.

**C. Debt Collection.**

1. In accordance with the DOC credit and debt management procedures, accounts receivable shall be promptly established, billed, and collected. The provisions listed below must be adhered to in the collection of debts related to financial assistance:

- a. the Debt Collection Act (31 U.S.C. 3701 et seq.) and implementing regulations published at 31 CFR §§ 900-904;
- b. the regulations at 15 CFR Part 21, Administrative Offset;
- c. the DOC Credit and Debt Management Operating Standards and Procedures Handbook; and
- d. any other relevant laws, regulations, OMB circulars, and DOC policies.

2. Delinquent debts shall be assessed the following charges in accordance with the Treasury Financial Manual and the DOC Credit and Debt Management Operating Standards and Procedures Handbook:

- a. An interest charge on the amount due shall be applied and collected in accordance with the Federal Claims Collection Standards (31 CFR § 901.9) and the Treasury Financial Manual (TFM 6-8000). As established by the Debt Collection Act, the minimum annual rate of interest to be charged is the Department of the Treasury's Current Value of Funds. This rate is published in the *Federal Register* by the Department of the Treasury. The assessed rate shall remain fixed for the duration of the indebtedness.

b. A penalty charge, not to exceed six (6) percent a year, shall be applied on any portion of a debt that is delinquent for more than ninety (90) calendar days. The charge will accrue and be assessed from the date the debt became delinquent.

c. An administrative charge shall be applied to cover processing and handling of the amount due.

d. State and local governments, including Indian Tribes, are not subject to subparagraphs (b) or (c) above.

e. For specific information on waiving late charges, whether additional interest, penalty charges, or administrative charges, refer to Chapter 8, Section 3.07 of the DOC Credit and Debt Management Operating Standards and Procedures Handbook.

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

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

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

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

(2) The Grants Officer may suspend payments under any current award(s) if payment on a repayment schedule is fourteen (14) calendar days delinquent. The Grants Officer must suspend the current award(s) when payment is thirty (30) calendar days delinquent unless the Grants Officer determines and sets forth in writing the reasons that it is not in the best interest of the Federal Government to do so. This written determination shall become part of the official award

file. Before sending the request to suspend an award to the Finance/Accounting Officer and the notification of suspension to the recipient, the Grants Officer must verify with the Finance/Accounting Officer that the repayment schedule remains delinquent.

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

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

b. Other extraordinary circumstances may exist which may warrant proceeding with an award prior to repayment of a delinquent debt.

(1) Circumstances that merit such action include:

(a) The debt is being recognized as due but is currently in the process of being paid through the recipient's accounting system, or

(b) The debt is reported as unpaid as a result of an error.

(2) Where it is determined that reasons for delaying repayment of the debt merit further investigation, and that not proceeding with the award will frustrate successful achievement of programmatic goals, the Program Officer shall prepare and sign a written justification for the concurrence of the Grants Officer, who shall maintain the documentation in the official award file. The justification must have the concurrence of the head of the operating unit and be included in the official award file.

5. The Grants Officer shall advise the recipient that payment of audit-related debts cannot be from funds received from other Federal programs or result in a reduced level of program activity.

6. The Debt Collection Improvement Act of 1996 named the Department of the Treasury as the agency to receive from other Federal agencies delinquent debts more than 180 days old for purposes of collection. The Debt Collection Improvement Act also established Treasury's Financial Management Service as the Federal Government's debt collection center. Treasury has chosen to implement the Debt Collection Improvement Act through an expanded Treasury Offset Program (TOP) and cross-servicing technique. DOC has signed a cross-servicing and TOP agreement with Treasury. Delinquent debts less than 180 days old may be transferred for cross-servicing at the election of the Department. The appropriate official must comply with notification requirements contained in 15 CFR Part 21, Administrative Offset, before debts are transferred to the Department of the Treasury for cross-servicing government-wide offset of debt. See, also, 31 CFR Part 901, Standards for the Administrative Collections of Claims.

**D. Exceptions.** The procedures set forth in this chapter are applicable to all operating units except those that are not subject to the disposition of claims under the Debt Collection Improvement Act of 1996 (DCIA) or its implementing regulations, e.g., EDA. Where an operating unit is not required by law to follow DCIA procedures, it must develop and follow its



own alternative procedures, but to the extent feasible, it also must comply with and employ the guidelines set out in this chapter.

## 15. PUBLIC POLICY REQUIREMENTS

**A. Overview.** All DOC financial assistance awards will be conducted by the recipient in accordance with applicable statutes and regulations. DOC has the responsibility to enforce recipient compliance with public policy requirements as a condition of receiving Federal assistance funds. The requirements in this chapter are those based on social, economic, or other objectives or considerations that may be attached to the expenditure of Federal funds by recipients and subrecipients.

**B. General Requirements.** The following is a list of requirements that generally apply to all DOC awards:

1. Provide DOC, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and establish a proper accounting system in accordance with generally accepted accounting principles or agency directives. See 15 CFR §14.53(e) or 15 CFR §24.42(e), as applicable.
2. 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. See Chapter 16, Section D., of this Manual.
3. Initiate and complete the work within the applicable time frame after receipt of approval of an award by the Grants Officer.
4. Comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of the Office of Personnel Management Standards for a Merit System of Personnel Administration (5 CFR Part 900, Subpart F).

**C. Nondiscrimination Requirements.** There are several Federal statutes, regulations, Executive Orders, and policies relating to nondiscrimination. No person in the United States shall, on the ground of race, color, national origin, handicap, religion, age, 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. These requirements include but are not limited to:

1. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq.) and DOC implementing regulations published at 15 CFR 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.) and implementing regulations at 15 CFR Part 8a prohibiting discrimination on the basis of sex under Federally assisted education programs or activities;

3. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §§ 794) and DOC implementing regulations published at 15 CFR Part 8b prohibiting discrimination on the basis of handicap under any program or activity receiving or benefitting from Federal assistance;
4. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 et seq.) and DOC implementing regulations published at 15 CFR Part 20 prohibiting discrimination on the basis of age in programs or activities receiving Federal financial assistance;
5. 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;
6. Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing;
7. Parts II and III of Executive Order 11246, as amended by Executive Orders 11375 and 12086 requiring Federally assisted construction contracts to include the nondiscrimination provisions of §§ 202 and 203 of that Executive Order and Department of Labor regulations implementing Executive Order 11246, 41 CFR § 60-1.4(b).
8. Any other Federal non-discrimination requirements.

**D. Environmental Requirements.** Federal agencies are responsible for environmental compliance and are required to consider the impact that projects funded with Federal assistance may have on the environment. The recipient and subrecipients must comply with all environmental standards prescribed under the following statutes and, as applicable, identify to the awarding agency any impact the award may have on the environment.

1. The National Environmental Policy Act of 1969 (42 U.S.C. §§ 4321 et seq.). Recipients of Federal assistance are required to identify to the awarding agency any impact an award will have on the quality of the human environment, and assist the agency to comply with the National Environmental Policy Act. Applicants for assistance may be required to prepare environmental impact information as part of a proposal.
2. Floodplain Management, EO 11988 and, Protection of Wetlands, EO 11990, May 24, 1977. Recipients must identify proposed actions in Federally defined floodplains and wetlands to enable the agency to make a determination whether there is an alternative to minimize any potential harm.
3. Clean Air Act, Clean Water Act, and EO 11738. Recipients must comply with the provisions of the Clean Air Act (42 U.S.C. §§ 7401 et seq.), Clean Water Act (33 U.S.C. §§ 1251 et seq.), and EO 11738, and shall not use a facility on EPA's List of Violating Facilities in performing any award that is nonexempt under 40 CFR § 15.5, 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.

4. The Flood Disaster Protection Act of 1973 (42 U.S.C. § 4002 et seq.). Flood insurance, when available, is required for Federally assisted construction or acquisition in flood-prone areas.
5. The Endangered Species Act of 1973, as amended, (16 U.S.C. § 1531 et seq.). Recipients must identify any impact or activities which 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 required reviews under the Endangered Species Act, as applicable.
6. The Coastal Zone Management Act, as amended, (16 U.S.C. § 1451 et seq.). Funded projects must be consistent with a coastal state s approved management program for the coastal zone.
7. The Coastal Barriers Resources Act, (16 U.S.C. § 3501 et seq.). Restrictions are placed on Federal funding for actions within a Coastal Barrier System.
8. The Wild and Scenic Rivers Act, as amended, (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.
9. The Safe Drinking Water Act of 1974, as amended, (42 U.S.C. §§ 300f-j). This Act precludes Federal assistance for any project that the EPA determines may contaminate a sole-source aquifer so as to threaten public health.
10. The Resource Conservation and Recovery Act of 1976, as amended, (42 U.S.C. §§ 6901 et seq.). This act regulates the generation, transportation, treatment, and disposal of hazardous wastes, and also provides that recipients of Federal funds give preference in their procurement programs to the purchase of recycled products pursuant to EPA guidelines.
11. The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, and the Superfund Amendments and Reauthorization Act of 1986, and the Community Environmental Response Facilitation Act of 1992, as amended, (42 U.S.C. §§ 9601 et seq.). These requirements address responsibilities of hazardous substance releases, threatened releases and environmental cleanup. There is also a requirement to impose reporting and community involvement requirements to ensure disclosure of the release or disposal of regulated substances and cleanup of hazards.
12. Environmental Justice in Minority Populations and Low Income Populations, EO 12898, February 11, 1994. This order identifies and addresses adverse human health or environmental effects of programs, policies and activities on low income and minority populations.

#### **E. Other Socioeconomic Requirements**

1. Comply with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (42 U.S.C. §§ 4601 et seq.); and implementing regulations issued at 15 CFR Part 11, which provide for fair and equitable treatment of persons

displaced or whose property is acquired as a result of Federal or Federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

2. Assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended and the Advisory Council on Historic Preservation Guidelines, (16 U.S.C. §§ 470 et seq.); the Archaeological and Historic Preservation Act of 1974, (16 U.S.C. §§ 469a-1 et seq.); Protection and Enhancement of the Cultural Environment, EO 11593; Locating Federal Facilities on Historic Properties in our Nation s Central Cities, EO 13006; and Indian Sacred Sites, EO 13007 (ensures protection and accommodation of access).

3. Comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.), which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

4. Comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328), which limit the political activities of employees or officers of state or local governments whose principal employment activities are funded in whole or in part with Federal funds.

5. Comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7); the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. § 874); and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327 - 333), regarding labor standards for Federally-assisted construction subagreements (wage guarantees).

6. Cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, Audits of States, Local Governments, and Non-Profit Organizations.

7. Comply with the provisions of EO 12549, Debarment and Suspension, and DOC's implementing regulations published at 15 CFR Part 26, Subparts A through E, Governmentwide Debarment and Suspension (Nonprocurement), 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.

8. Comply with the provisions of the Drug-Free Workplace Act of 1988 (Public Law 100-690, Title V, Subtitle D, as codified at 31 U.S.C. § 1352) and DOC implementing regulations published at 15 CFR Part 26, Subpart F, Governmentwide Requirements for Drug-Free Workplace (Grants), which require that the recipient take steps to provide a drug-free workplace.

9. Comply with the provisions of Section 319 of Public Law 101-121 as codified at 31 U.S.C. §1352, and DOC implementing regulations published at 15 CFR Part 28, New Restrictions on Lobbying. These provisions generally 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. The provisions of 15 CFR Part 28 apply to DOC grants and cooperative agreement awards exceeding \$100,000. The recipient must submit a completed Disclosure of Lobbying Activities (SF-LLL) regarding the use of non-Federal funds for lobbying.

10. Comply with the provisions of the Fly America Act found at 49 U.S.C. § 40118. The implementing Federal Travel Regulations are found at 41 CFR §§ 301-10.131 through 301-10.143. The Fly America Act requires that Federal travelers and others performing U.S. Government-financed foreign air travel use U.S. flag air carriers, to the extent that service by such carriers is available. In general, foreign air carriers may be used only 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. A checklist is included in the Exhibits Section of this Manual to assist in determining justification for a waiver of the restrictions of the Fly America Act.

11. To the greatest extent practicable, purchase American-made equipment and products with funding by DOC.

12. Comply with EO 13043, Increasing Seat Belt Use in the United States, recipients must encourage employees and contractors to enforce on-the-job seat belt policies and programs when operating company-owned, rented or personally-owned vehicles.

13. Comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing the program under which funding is provided.

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

**F. Requirements for Research Awards.** In addition to the items listed in Section B through E, above, the following is a list of requirements that generally apply to DOC research awards:

1. Comply with 15 CFR Part 27 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

**[Note:** DOC may adopt further regulatory requirements related to human subjects research. Specifically, DOC is considering adopting parts of the common rule that establish additional protections for special classes of human subjects, such as prisoners, children, pregnant women, fetuses, and fetal tissue. DOC may adopt additional regulatory requirements consistent with other laws that do not currently apply to DOC that relate to transplantation of fetal tissue, xenotransplantation, cloning, research involving recombinant DNA molecules and embryo research.]

2. Comply with the Laboratory Animal Welfare Act of 1966 (Public Law 89-544), as amended, (7 U.S.C. §§ 2131 et seq.) (animal acquisition, transport, care, handling, and use in projects); 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.

3. **Publications and Acknowledgment of Sponsorship.** Publication of the results of the research project in the appropriate professional journals is encouraged as an important method of recording and reporting scientific information. The recipient is required to submit a copy to the funding agency and when releasing information related to a funded project include a statement that the project or effort undertaken was or is sponsored by DOC. The recipient is also responsible for assuring that every publication of material (including Internet sites) based on or developed under an award, except scientific articles or papers appearing in scientific, technical or professional journals, contains the following disclaimer: This [report/video] was prepared by [recipient name] 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. This also applies to videos produced under DOC financial assistance awards.

**G. Requirements for Construction Awards.** In addition to the items listed in Section B. through E. of this chapter, the following is a list of requirements that generally apply to DOC construction awards:

1. Provide and maintain competent and adequate engineering supervision at the construction site to ensure that the complete work conforms to the approved plans and specifications and furnish progress reports and such other information as may be required by the DOC or the State.

2. Agreement not to dispose of, modify the use of, or change the terms of the real property title, or other interest in the site and facilities without permission and instructions from the awarding agency. Recipients will record the Federal interest in the title of real property in accordance with DOC directives and will include a covenant in the title of real property acquired in whole or in part with Federal assistance funds to assure non-discrimination during the useful life of the property.

3. Recipients may be required to prepare an environmental impact statement or other required environmental documentation to enable DOC to fulfill environmental compliance requirements as set out above in Section D before approving or releasing funds for construction. For potential impacts discovered after award, a recipient will not be permitted to take any action that will have an adverse environmental impact (physical disturbance of a site such as breaking ground) until the funding agency provides written notification of compliance with the environmental impact analysis process.

4. Pursuant to EO 13202, Preservation of Open Competition and Government Neutrality Towards Government Contractors Labor Relations on Federal and Federally Funded Construction Projects, unless the project is exempted under section 5(c) of the order, bid specifications, project agreements, or other controlling documents for construction contracts awarded by recipients of grants or cooperative agreements, or those of any construction manager acting on their behalf, shall not: a) require or prohibit bidders, offerors, contractors, or subcontractors to enter into or adhere to agreements with one or more labor organizations on the same or related construction project(s); or b) otherwise discriminate against bidders, offerors, contractors, or subcontractors for becoming or refusing to become or remain signatories or otherwise to adhere to agreements with one or more labor organizations, on the same or other related construction project(s).

**[Note:** As of the date of this Manual's issuance, EO 13202 was the subject of litigation in the Federal courts, and an appeal is currently pending in the U.S. Court of Appeals for the D.C. Circuit. See Building and Construction Trades Department v. Joe M. Allbaugh, 172 F. Supp. 2d 138 (D.D.C. 2001), which held that the EO was not legally authorized. Agencies that administer Federal grants subject to EO 13202, as amended, have received guidance from OMB to immediately cease implementation of the EO's requirements pending judicial resolution of the appeal. Agencies will be advised further by OMB when it is appropriate to begin implementation of the EO. See Chapter 9., Paragraph I.3.d., of this Manual for a special award condition that should be included in all awards to address the problem caused by the previous inclusion of the EO in the DOC ST&Cs (October 2001).]



## 16. OTHER GRANTS ADMINISTRATION POLICIES AND REQUIREMENTS

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

**B. Bona Fide Needs Rule.** The bona fide needs rule provides that an appropriation which is limited for obligation to a definite period is available only for payment of expenses properly incurred during the period of availability or to complete awards properly made within that period (31 U.S.C. § 1502(a)). For agencies with annual funds, a financial assistance award using those funds must meet a bona fide agency need that arises during that fiscal year. If the project is funded with time limited appropriations and the nature of the award renders it impossible to sever the tasks on an annual incremental basis, the project must be funded wholly at the time of the award. In some cases, the agency's need may be to make an award that fiscal year, even though the work to be performed under the award will not take place until the following fiscal year. No-year funds, which are the majority of DOC financial assistance funds, are not subject to the bona fide needs rule. Questions concerning the bona fide needs rule should be referred to the OGC General Law Division.

**C. Checklists.** Checklists can be effective tools in assuring that required actions in specific areas have been completed, and they are helpful in the review and analysis of various documents. Use of checklists is encouraged but not required by this Manual.

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

## **1. Federal Employees.**

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

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

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

**3. Recipient Employees.** Financial assistance recipients are required to certify, through the execution of SF-424B, that they will 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. This assurance is intended to avoid any conflict or appearance of a conflict of interest that might arise between a recipient employee's personal financial and other interests, and his or her duties and responsibilities under a financial assistance award. Costs incurred in violation of conflict of interest assurances contained in the SF-424B may be determined to be neither reasonable nor in compliance with applicable cost limitations, and hence, unallowable under applicable cost principles.

**4. Contracts and Subawards under Grants.** Financial assistance recipients are required by 15 CFR § 14.42 and 15 CFR § 24.36(b)(3) to maintain written standards governing the performance of employees engaged in the award and administration of contracts. These standards are intended to prohibit employees, officers and agents from participating in the

selection, award or administration of contracts supported by Federal funds if a conflict of interest would be involved. Violation of these procurement requirements could be a basis for suspension or termination of an award, or other appropriate action. Because unresolved conflicts of interest have the potential to undermine the integrity of the financial assistance process, it is important that such conflicts be brought immediately to the attention of the Program Officer for resolution. The DOC applies this requirement to subawardees.

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

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

**G. Criminal and Prohibited Activities.** Laws are enacted to preserve the integrity of the Federal Government and the public by holding Federal contractors, grantees, and agency employees accountable for any criminal or prohibited activities conducted while participating under a Federal program.

1. The Program Fraud Civil Remedies Act (31 U.S.C. §§ 3801-3812), 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). Implementing regulations for DOC are published at 15 CFR Part 25.

2. False statements (18 U.S.C. §§ 287 and 1001), provides that whoever makes or presents any false, fictitious, or fraudulent statements or representations or claims 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 False Claims Act (31 U.S.C. §3729 *et seq.*), provides that suits under this act can be brought by the government or a person on behalf of the government for false claims under Federal assistance programs.

4. Copeland Anti-Kickback Act (18 U.S.C. § 874 and 40 U.S.C. § 276c), 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.

**H. DOC Forms.** DOC grants administration forms approved for use with grants and cooperative agreements are listed below and are displayed in Appendix A of this Manual. Operating units must ensure that these are the forms used for their prescribed purposes.

1. Form CD-450 - Financial Assistance Award
2. Form CD-451 - Amendment to Financial Assistance Award
3. Form CD-478 - Federal Assistance Information Sheet
4. Form CD-511 - Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying
5. Form CD-512 - Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying
6. Form CD-346 - Applicant for Funding Assistance
7. Form CD-571 - Reviewer Conflict of Interest and Confidentiality Certification for Non-Governmental Peer Reviewers

**I. Federal Assistance Award Data System (FAADS).** FAADS is a central collection of selected, computer-based data on Federal financial assistance award transactions, compiled quarterly. FAADS is required by 31 U.S.C. § 6102(a). The DOC portion of FAADS is a compilation of DOC grant, cooperative agreement, loan, and loan guarantee actions. FAADS is not an accounting system. Reporting in FAADS is based on information about the primary recipient and does not include information about subawards and contracts. Grants Officers will provide to OEAM electronic information for FAADS and OEAM will provide the DOC FAADS report to the Bureau of Census on a quarterly basis. FAADS information will be verified for accuracy.

**J. Freedom of Information Act (FOIA).** The FOIA (5 U.S.C. § 552) generally provides that any person has a right of access to Federal agency records, except to the extent that such records (or portions thereof) are protected from disclosure by exemptions. The DOC regulations implementing the FOIA are found at 15 CFR Part 4, Public Information, which sets forth rules for DOC and operating units to make requested materials, information, and records publicly available under FOIA. Unless prohibited by law and to the extent permitted under the FOIA, contents of applications and proposals submitted by successful applicants may be released in response to FOIA requests. In addition, 15 CFR §14.36, Intangible Property, requires that research data relating to published research findings produced under an award that were used by the Federal Government in developing an agency action that has the force and effect of law will be made available to the public through the procedures established under the FOIA.

## **K. Management and Institutional Grant Reviews.**

**1. Management Reviews.** As deemed appropriate, OEAM will conduct reviews to evaluate the internal grants administration policies and procedures of the operating units, including field or remote locations. At a minimum, the review team should include members from the OGC as well as knowledgeable representatives from the operating unit. The scope of the review will include but not be limited to compliance with applicable public laws, regulations, OMB circulars, this Manual, and internal grants administration policies of the operating unit. The review team's report will be sent to the operating unit for comment prior to publication.

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

**L. Minimum Notice for Competitive Solicitation.** In order to provide the public reasonable notice, there must be a minimum of 30 calendar days between the date of publication of a solicitation for applications in the *Federal Register* and the closing date for receipt of applications (e.g., November 1 publication date and December 1 closing date).

**M. Opportunities for Minority Business Enterprises and Women Business Enterprises.** EO 12432 (July 1983) requires that each Federal agency identified as having substantial procurement or grant-making authority develop an Annual Minority Business Development Plan to increase minority business participation and report on the progress towards accomplishing this plan. The DOC is strongly committed to these objectives and will encourage all recipients of grants and cooperative agreements to take positive steps to ensure fairness and equity.

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

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

**O. Paperwork Reduction Act (PRA) - Collections of Information Conducted under Grants and Cooperative Agreements.** The PRA (44 U.S.C. 3501), and its implementing regulations at 5 CFR 1320, Controlling Paperwork Burdens on the Public, require an agency to obtain approval from OMB before conducting or sponsoring a collection of information. The

regulations provide that a collection of information undertaken by a recipient of a Federal grant is considered to be sponsored by an agency only if (1) The recipient of a grant is collecting information at a specific request of the agency; or (2) The terms and conditions of the grant require specific approval by the agency of the collection of information or the collection procedures.

**P. Patents and Intellectual Property Rights.**

**1. Inventions.** The rights to any invention made by a recipient under a DOC financial assistance award are determined by the Bayh-Dole Act, Public Law 96-517, as amended, and codified in 35 U.S.C. § 200 *et seq.* The specific rights and responsibilities are described in more detail in 37 CFR Part 401 and in particular, in the standard patent rights clause in 37 CFR § 401.14.

**a. Ownership.**

(1) **Recipient.** The recipient has the right to own any invention it makes (conceived or first reduced to practice) or made by its employees. The recipient may not assign its rights to a third party without the permission of DOC unless it is to a patent management organization (i.e., a university's research foundation). The recipient's ownership rights are subject to the government's nonexclusive paid-up license.

(2) **Department.** If the recipient elects not to own or does not elect rights or file a patent application within the time limits set forth in the standard patent rights clause, DOC may request an assignment of all rights, which is normally subject to a limited royalty free nonexclusive license for the recipient. DOC owns any invention made solely by its employees but may license the recipient in accordance with the procedures in 37 CFR Part 404.

(3) **Inventor/Employee.** If neither the recipient nor the Department is interested in owning an invention by a recipient employee, the recipient, with the written concurrence of DOC Patent Counsel, may allow the inventor/employee to own the invention subject to certain restrictions as described in 37 CFR § 401.9.

(4) **Joint inventions.** Inventions made jointly by a recipient and a DOC employee will be owned jointly by the recipient and DOC. However, DOC may transfer its rights to the recipient as authorized by 35 U.S.C. § 202(e) and 37 CFR § 401.10 if the recipient is willing to patent and license the invention in exchange for a share of net royalties based on the number of inventors (e.g., 50-50 if there is one recipient and DOC employee). The agreement will be prepared by DOC Patent Counsel and may include other provisions, such as a royalty free license to the government and certain other entities.

**b. Responsibilities.** The recipient has responsibilities and duties set forth in the standard patent rights clause, which are not described below. The recipient is expected to comply with all the requirements of the standard patent rights clause and 37 CFR Part 401.

(1) **Reporting.** Within two months of when the recipient reports the invention, the recipient will send the invention disclosure to DOC Patent Counsel (HCHB Room 4613, Washington, DC 20230, telephone: 202-482-8097) and the appropriate DOC program office.

(2) **Electing.** Within two years of reporting the invention to DOC, the recipient will notify DOC Patent Counsel of its decision whether or not it wishes to own the invention.

(3) **Filing.** Within one year of notifying DOC that it wishes to own the invention, the recipient will file a patent application (either a provisional or non-provisional) and promptly send a copy of the application to DOC Patent Counsel. Any foreign or international application must usually be filed within 10 months of the first filed application in the United States. The recipient will ensure that any U.S. application contains the required statement of government support. The recipient will also promptly send the required confirmatory government license to DOC Patent Counsel who shall record that license in the U.S. Patent and Trademark Office. If the recipient decides to discontinue the prosecution of any patent application or not pay a maintenance fee or defend a reexamination, it shall notify DOC Patent Counsel of that fact in sufficient time (but not less than 30 days) for the government to respond to any outstanding requirement or letter from a patent office. However, if the recipient is filing a continuing application, it needs only to notify DOC Patent Counsel of this and provide a copy of the continuing application with the appropriate confirmatory license. Upon issuance of any application, the recipient will promptly provide a copy of the patent to DOC Patent Counsel.

(4) The recipient should send any request for an extension of time to DOC Patent Counsel in advance of the expiration of the time period.

**2. Data, Databases, and Software.** The rights to any work produced or purchased under a DOC Federal financial assistance award are determined by 15 CFR § 14.36 and 15 CFR § 24.34. Such works may include data, databases or software. The recipient owns any work produced or purchased under a DOC Federal financial assistance award subject to DOC's right to obtain, reproduce, publish or otherwise use the work or authorize others to receive, reproduce, publish or otherwise use the data for government purposes.

**3. Copyright.** The Federal awarding agency reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish or otherwise use, and authorize others to use, for Federal Government purposes: (1) the copyright in any work developed under a grant, subgrant, or contract under a grant or subgrant; and (2) any rights of copyright to which a grantee, subgrantee, or a contractor purchased ownership with grant support. Works jointly authored by DOC and recipient employees may be copyrighted but only the part authored by the recipient is protected because, under 17 U.S.C. § 105, works produced by government employees are not copyrightable in the United States. If the contributions of the authors cannot be separated, the copyright status of the joint work is questionable. Therefore, the Grants Officer should notify the DOC Patent Counsel of any issue concerning a questionable copyright purchased or produced under the award and resolve the status. On occasion, DOC may ask the recipient to transfer to DOC its copyright in a particular work when DOC is undertaking the primary dissemination of the work. Ownership of copyright by the government through assignment is permitted by 17 U.S.C. § 105.

**Q. Payments.** Payments shall be made by electronic funds transfer in accordance with the Debt Collection Improvement Act of 1996. Advances should be authorized unless there is sufficient adverse information about the recipient in accordance with Chapter 9, subparagraph I.3.c.(2), of this Manual. Advances will be limited to the minimum amounts necessary to meet immediate disbursement needs. Advanced funds not disbursed in a timely manner must be promptly returned to DOC. The DOC may begin using the Department of the Treasury's Automated Standard Application for Payment (ASAP) system. Payments should be monitored to assure that recipients are not holding excess cash on hand.

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

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

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

**U. Scientific or Research Misconduct.** Scientific or research misconduct refers to the fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results. It does not include honest errors or differences of opinion. The recipient organization has the primary responsibility to investigate allegations and provide reports to the Federal Government. Funds expended on an activity that is determined to be invalid or unreliable because of scientific misconduct may result in a disallowance of costs for which the institution may be liable for repayment to the awarding agency. The Office of Science and Technology Policy at the White House published in the *Federal Register* on December 6, 2000, a final policy that addressed research misconduct. The policy was developed by the National Science and Technology Council (65 FR 76260).

**V. Statutory Authority.** Each financial assistance proposal must be awarded under the proper authorizing statute. Public Law 95-224, "Federal Grant and Cooperative Agreement Act of 1977," as amended (31 U.S.C. §§ 6301-6308) does not provide legislative authority to fund financial assistance awards. It merely provides the basis for selecting the funding instrument.



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

1. When the two organizations, the Program Officer and the Grants Officer agree that it is in the best interests of the Federal Government and the intended beneficiaries of the award to allow the transfer, the Grants Officer will amend the award to transfer it to the new recipient organization. In such cases, the Program Officer must submit a request to the Grants Officer to change recipients. The request shall include documentation attesting to the original recipient's and proposed replacement recipient's consent to the proposed transfer. Such documentation must include a written agreement between the original recipient and the proposed replacement recipient executed by authorized representatives of both parties. In this instance, the organization relinquishing the award will be liable for all programmatic activities and all funds expended under the award prior to the effective date of the transfer. The relinquishing organization will be responsible for all closeout activities, including having an audit performed, if required, for the award prior to the effective date of the transfer. The organization to which the award is transferred must submit an application (if appropriate) which includes a proposal and detailed budget narrative (a maximum of an original and two copies may be required by the Federal awarding agency). The following forms must also be submitted, as applicable: the SF-424, SF-424A, SF-424B, SF-424C, SF-424D, CD-511, CD-346, SF-LLL, or any other approved program specific forms. The Program Officer will review all documents and make a recommendation as to the applicant's adequacy to meet program requirements which will be forwarded to the Grants Office along with the request. This review will be the same as the review of any new application, including a responsibility check on the applicant, unless that function is performed by the Grants Office. The language in the amendment must clearly delineate the responsibilities of both parties to the transfer.

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

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

b. The Grants Officer will consult with the OGC on the legal merits of the proposed novation. If the novation is determined to be in order, the Grants Officer will request that the proposed new recipient submit an application and an amended proposal (if appropriate) to effect the change in award recipient. The application must include an original proposal and detailed budget narrative (as well as two copies if required by the Federal awarding agency). The

following forms must be submitted, as applicable: the SF-424, SF-424A, SF-424B, SF-424C, SF-424D, SF-511, CD-346, SF-LLL, or any other approved program specific forms. The Grants Officer will then obtain a review and written recommendation regarding the proposed novation from the Program Officer as to the programmatic efficacy of the proposed agreement. The Program Officer should examine whether the scope of work has changed or if there are other issues arising that would put the initial competitive selection in jeopardy because of differences between the original and the new recipient and review any related budgetary changes. The Grants Officer must make a responsibility determination regarding the new recipient. If the Grants Officer then determines that the award should continue, he/she will issue an amendment to the award to effect the transfer to the subsuming organization.

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

**Y. Videos Produced under DOC Financial Assistance Awards.** Before production of a video for public viewing is begun, the operating unit must review and approve the production plans and the final video to ensure that it will be of an acceptable quality and appropriately represents the DOC.

**Z. Waivers and Deviations.** Any request for waivers and/or deviations from the requirements of this Manual must be submitted in writing to the Director, OEAM, by the Head of Operating Unit. The request must include a full explanation of the reason for the request and justification for the deviation or waiver. OEAM will review the request, coordinate its review with OGC and other appropriate offices, and provide a response in accordance with Chapter 4, Paragraph B.11. of this Manual. Requests for waivers and deviations from the requirements will be approved only in extraordinary circumstances and when such approval will be in the best interest of the Federal Government. Proposed deviations from DOC regulations (e.g., uniform administrative requirements) may require that OEAM seek prior approval from OMB.

## **17. CONSTRUCTION AWARDS (Reserved)**

TO BE ADDED AT A LATER DATE

## **18. RESEARCH AWARDS (Reserved)**

TO BE ADDED AT A LATER DATE

**19. GUIDELINES FOR THE PREPARATION OF *FEDERAL REGISTER*  
NOTICES ANNOUNCING THE AVAILABILITY OF FINANCIAL  
ASSISTANCE FUNDS - REQUESTS FOR APPLICATIONS (RFA)**

**A. Publication in the *Federal Register*.**

1. A competitive application should be reviewed only when it has been submitted in response to a notice published in the *Federal Register*. This notice may be abbreviated to omit information required by these Guidelines if the abbreviated notice references the Department-wide notice which includes the information on other requirements as listed in Subparagraph C.2.g.(15), Other Requirements, of this chapter.

2. A copy of the Department-wide notice as published in the *Federal Register* is in Appendix D of this Manual.

3. The *Federal Register* notice soliciting applications will generally contain programmatic information listed in Paragraphs a. through p., below:

a. Program Authority;

b. Catalog of Federal Domestic Assistance (CFDA) Number and Title;

c. Program Description;

d. Funding Availability;

e. Matching Requirements;

f. Type of Funding Instrument (grant or cooperative agreement), to include an explanation of substantial involvement if a cooperative agreement;

g. Eligibility Criteria (to include explanation for limited eligibility in accordance with Chapter 6, Section B.2., of this Manual, if applicable);

h. Award Period;

i. Evaluation Criteria;

j. Project Funding Priorities, if applicable;

k. Selection Procedures;

l. Applicability of EO 12372;

m. Identification of Any Non-Standard Forms Used in the Application Package;

- n. Disposition of unsuccessful applications in accordance with Chapter 8, Section J.2.b., of this Manual;
  - o. Citation(s) to the regulation and/or Department-wide notice where information required by these guidelines can be found if it is not included in the solicitation; and
  - p. Program-specific requirements, such as environmental compliance provisions for construction projects and policies on patents, human subjects, care and use of laboratory animals, and biosafety measures, as applicable, for research projects.
4. Alternative publication of funding notices, such as in the Commerce Business Daily (CBD) in lieu of a *Federal Register* notice, are subject to the following three qualifications:
- a. Regulations governing program administration and setting forth all selection and evaluation criteria must have been previously codified in the CFR or published in an annual *Federal Register* notice. Additionally, the program regulations or annual notice must state that announcement of funding availability will be published in the alternative publication (providing the name of the alternative publication).
  - b. The notice that is published in the alternative publication must be kept to a minimum, i.e., the notice should include nothing more than a statement that funding for the program described in the regulations or annual *Federal Register* notice is available, a cite for the regulations or annual notice, the amount of funding, and any relevant dates and addresses.
  - c. The alternative publication can only be used for programs which would only seek responses from applicants that normally use the alternative publication. For example, a program which seeks responses from non-profits or a wide variety of applicants would be inappropriate for publication in the CBD.
5. In addition to the required publication in the *Federal Register* and/or appropriate alternative publication(s), programs are strongly encouraged to broaden their solicitation of eligible applicants with other forms of publication, such as soliciting through the Internet, direct mailings, conferences, trade association newsletters, professional journals, newspapers, etc.
6. If material changes are made with respect to the information published, or if circumstances arise after the annual notice is published which would have a major effect on the applicants proposals for funding, the new information or changed circumstances must be published in the *Federal Register*.

**B. Coordination and Clearance.** Proposed notices must be reviewed and, as appropriate, cleared by the Grants Officer; the Office of Chief Counsel; Information Collection Analysis Division; FALD; and OEAM. All notices must be submitted to AGC/L&R for final review and clearance prior to submission to the *Federal Register*. If clearances were obtained by the program officials, those clearances shall be provided to AGC/L&R with submission of the proposed notice. AGC/L&R can also coordinate clearance of the proposed notice. AGC/L&R will issue a docket number which authorizes publication in the *Federal Register* when

appropriate clearances have been obtained. After issuance of the docket number by AGC/L&R, the operating unit is responsible for submitting the notice to the Office of the *Federal Register* for publication or to Congress and the General Accounting Office (GAO), as required by 5 U.S.C. 801 et seq. See Section D. of this chapter.

**C. Format Requirements.** RFA notices should be drafted in accordance with the guidelines delineated in the *Federal Register Document Drafting Handbook*, which includes the submission requirements. In accordance with the handbook, notices must be organized as follows:

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

- a. Agency is always the Department of Commerce.
- b. Subagency (if necessary). Identifies the operating unit which is issuing the notice.
- c. CFR title and part, if applicable. (RFA notices are not generally assigned a CFR title and part.)
- d. Docket number.
- e. RIN.
- f. **Subject Heading.** Describes the content of the notice in a concise statement.

[**Note:** The titles of the headings listed above should not be typed in the notice itself. The following is an example of how the headings for RFAs should appear in the notice:

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

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

- a. **AGENCY.** Identifies the agency issuing the document. The caption usually repeats the name of the agency as carried in the document's headings. When a subagency and agency name appear together, the subagency name is carried first and the agency name is represented by its commonly used acronym or other shortened expression (For example, Economic Development

Administration, Commerce.) This caption may, in addition, identify a smaller organizational unit within the agency (for example, National Marine Fisheries Service, NOAA).

b. **ACTION.** Identifies the document category. This section should not be used to summarize the document. In this instance, the document category is a "Notice."

c. **SUMMARY.** Briefly describes in plain English what action is being taken, why the action is necessary, and the intended effect of the action. This section should not be extensive. Any extensive discussion belongs under the SUPPLEMENTARY INFORMATION section.

d. **DATES.** Contains any pertinent dates that the reader may need to know such as the closing dates for submission of preapplications (if applicable) and applications, anticipated number of days required to process applications, and date when awards are expected to be made. To provide the public reasonable notice and an opportunity to apply, there must be a minimum of 30 calendar days from the date of publication in the *Federal Register* and the closing date for receipt of applications (e.g., November 1 publication date and December 1 closing date).

[**Note:** Because the publication date of the notice will not be known until it is submitted to the Office of Federal Register, an alternative to inserting specific calendar dates is to allow the Office of Federal Register to calculate the dates by including the following where dates should appear in the notice, "{Insert (number of days) after the date of publication in the *Federal Register*}."]

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

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

g. **SUPPLEMENTARY INFORMATION.** Contains detailed narrative information about the notice. At a minimum, the following items must be included in this section:

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

(2) **Catalog of Federal Domestic Assistance (CFDA).** The CFDA number(s) and program title(s).

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

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



approximate amount and that funds will be contingent upon availability of funding. If a transfer of funds is anticipated, see Chapter 16, Section X., of this Manual.

(5) **Matching Requirements.** The amount or percentage of any matching funds applicant will be required to contribute if the application is approved and any other pertinent information about the matching requirement.

(6) **Funding Instrument(s).** The type of funding instrument(s) (i.e., grant and/or cooperative agreement) planned to be used in making awards. If cooperative agreement applications are solicited, the notice should indicate the type and the extent of substantial involvement the operating unit intends to have in projects.

(7) **Eligibility Criteria.** An explicit description of who is eligible to apply (e.g., States, universities, non-profit organizations, for-profit organizations, individuals, etc.), including any limitations imposed by the funding agency.

(8) **Award Period.** Indicate the period of time during which Federal sponsorship will begin and end (award period). Also, indicate the period of time when Federal funding will be available for obligation by the recipient (funding period). The notice should also state whether the Program Office is requesting multi-year award applications. If so, the notice must clearly state that funding for each year's activities is contingent upon the availability of funds from Congress, satisfactory performance, and is at the sole discretion of the agency. The RFA should solicit applications, including budgets, covering the entire multi-year period and identify the amount currently available and the amounts proposed for the second, third, fourth, and fifth years' activities.

(9) **Evaluation Criteria.** The evaluation criteria that will be used in evaluating and selecting applications for discretionary funding consideration must be delineated. The criteria should be as specific as possible and the relative weight of each criterion must be given. If each criterion is of equal weight, the notice should so state. The criteria should provide an adequate basis for a review panel to review an applicant's capabilities and assess its likelihood of successfully performing under the award. Evaluation criteria should address such areas as adequacy of project plans, potential contribution to program objectives, key personnel qualifications, capabilities of the applicant organization, proposed costs, etc.

(10) **Project Funding Priorities.** If the operating unit plans to give priority to one or more particular kinds of projects under the notice, the funding priorities, and how they will be applied in deciding which applications to fund, must be described.

(11) **Selection Procedures.** Describe the process and procedures by which recommended applications will be selected.

(12) **Intergovernmental Review.** [insert applicable statement below]

(a) Applications under this program are subject to Executive Order (EO) 12372, "Intergovernmental Review of Federal Programs."

(b) Applications under this program are not subject to Executive Order (EO) 12372, "Intergovernmental Review of Federal Programs."

[**Note:** The Office of Legislative and Intergovernmental Affairs (OLIA) has the responsibility for determining which programs are covered by EO 12372. If the program is not subject to the EO, a waiver should have been received from OLIA.]

(13) **Application Forms and Kit.** If an application kit is available, the notice should so state and refer the reader to the "Addresses" section of the notice which identifies where to obtain a kit. If an operating unit has received Departmental and OMB clearance of application forms other than the standard forms, the approved application forms as well as the OMB clearance numbers shall be identified. The number of copies of an application with proposal is limited to an original and two copies unless prior approval for a larger number has been obtained from OMB.

(14) **Disposition of Unsuccessful Applications.** Indicate whether unsuccessful applications will be returned to the applicant, held in the Program Office (include the period of time any applications will be held), or destroyed.

(15) **Other Requirements.** Include the standard language listed in Paragraphs (a) and (b) below, or refer by citation to the DOC generic *Federal Register* publication for pre-award notification requirements for grants and cooperative agreements. When reference is made to DOC's generic *Federal Register* notice, the following should be added: However, please note that the Department of Commerce will not implement the requirements of Executive Order 13202 (66 FR 49921), pursuant to guidance issued by the Office of Management and Budget, in light of a court opinion which found that the Executive Order was not legally authorized. See Building and Construction Trades Department v. Allbaugh, 172 F. Supp. 2d 138 (D.D.C. 2001). This decision is currently on appeal. When the case has been finally resolved, the Department will provide further information on implementation of Executive Order 13202.

(a) The following pre-award notice provisions will apply to all applicants for and recipients of DOC grants and cooperative agreements:

1 **Federal Policies and Procedures.** Applicants, recipients and subrecipients are subject to all Federal laws and Federal and DOC policies, regulations, and procedures applicable to Federal financial assistance. The DOC specific regulations and forms, including DOC Financial Assistance Standard Terms and Conditions, as well as OMB forms and circulars can be accessed on the Internet through links on the DOC Grants Management Web site.

2 **Debarment, Suspension, Drug-Free Workplace, and Lobbying Provisions.** All applicants must comply with the requirements of 15 CFR Part 26, "Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)" and 15 CFR Part 28, "New Restrictions on Lobbying," including the submission of required forms and obtaining certifications from lower tier applicants/bidders.

3 **Pre-Award Screening of Applicant s and Recipient s Management Capabilities, Financial Condition, and Present Responsibility.** It is the policy of DOC to make awards to applicants and

recipients who are competently managed, responsible, financially capable and committed to achieving the objectives of the award(s) they receive. Therefore, pre-award screening may include, but is not limited to, the following reviews:

a Past Performance. Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

b Credit Checks. A credit check will be performed on individuals, for-profit, and non-profit organizations.

c Delinquent Federal Debts. No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until:

- i. The delinquent account is paid in full,
- ii. A negotiated repayment schedule is established and at least one payment is received, or
- iii. Other arrangements satisfactory to DOC are made.

d Name Check Review. Non-profit and for-profit applicants are subject to a name check review process, unless an exemption has been provided by the DOC Office of Inspector General (OIG). Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management honesty or financial integrity. Officials of state and local governments, economic development districts, and officials of accredited colleges and universities who are acting on behalf of their respective entities in applying for assistance are exempt from the name check requirement. If any of the conditions listed below in Paragraphs i, ii, or iii occur, DOC reserves the right to take one or more of the following actions: consider suspension/termination of an award immediately for cause; require the removal of any key individual from association with management of and/or implementation of the award; and make appropriate provisions or revisions with respect to the method of payment and/or financial reporting requirements:

- i. A key individual fails to submit the required Form CD-346, Applicant for Funding Assistance;
- ii. A key individual makes an incorrect statement or omits a material fact on the Form CD-346; or
- iii. The name check reveals significant adverse findings that reflect on the business integrity or responsibility of the recipient and/or key individual.

e List of Parties Excluded from Procurement and Nonprocurement Programs. The list maintained by GSA of parties excluded from Federal procurement and nonprocurement programs will be checked to assure that an applicant is not debarred or suspended on a government-wide basis from receiving financial assistance.

f Pre-Award Accounting System Surveys. The Grants Office, in cooperation with the OIG, may arrange for a pre-award survey of the applicant's financial management system in cases where the recommended applicant has had no prior Federal support, the operating unit has reason to question whether the financial management system meets Federal financial management standards, or the applicant is being considered for a high-risk designation.

4 No Obligation for Future Funding. If an application is selected for funding, DOC has no obligation to provide any additional future funding in connection with that award. Amendment of an award to increase funding or to extend the period of performance is at the total discretion of DOC.

5 Pre-Award Activities. If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the government. Notwithstanding any verbal or written assurance that may have been received, there is no obligation on the part of DOC to cover pre-award costs unless approved by the Grants Officer as part of the terms when the award is made.

6 Freedom of Information Act (FOIA) Disclosure. The FOIA, 5 U.S.C. § 552 and implementing DOC regulations at 15 CFR Part 4, set forth for DOC the rules to make requested material, information, and records publicly available. Unless prohibited by law and to the extent required under the FOIA, contents of applications and proposals submitted by applicants may be released in response to FOIA requests.

7 False Statements. A false statement on an application is grounds for denial or termination of an award and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. § 1001.

8 Application Forms. Unless the individual programs specify differently in their annual notice of availability of funding or in other appropriate publications, the following forms and certifications will be used in applying for DOC grants and cooperative agreements: SF-424, Application for Federal Assistance; SF-424A, Budget Information - Non-Construction Programs; SF-424B, Assurances - Non-Construction Programs; SF-424-C, Budget Information for Construction Programs; SF-424-D, Assurances - Construction Programs; as well as the Form CD-346, Applicant for Funding Assistance, as appropriate, shall be used in applying for financial assistance. In addition, Forms CD-511, Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying; CD-512, Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying; and SF-LLL, Disclosure of Lobbying Activities, will be used as appropriate.

(b) The following general provisions will apply to all DOC grant and cooperative agreement awards:

1 Administrative Requirements and Cost Principles. The uniform administrative requirements for all DOC grants and cooperative agreements are codified at 15 CFR Part 14, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher

Education, Hospitals, Other Non-Profit, and Commercial Organizations; and 15 CFR Part 24, Uniform Administrative Requirements for Grants and Agreements to State and Local Governments. The following is a list of cost principles most often used by DOC in grants and cooperative agreements: OMB Circular A-21, Cost Principles for Educational Institutions; OMB Circular A-87, Cost Principles for State, Local and Indian Tribal Governments; OMB Circular A-122, Cost Principles for Non-Profit Organizations; and Federal Acquisition Regulation Subpart 31.2, Contracts with Commercial Organizations, codified at 48 CFR § 31.2. Applicable administrative requirements and cost principles are identified in each award and are incorporated into the award by reference.

2 Award Payments. Advances will be limited to the minimum amounts necessary to meet immediate disbursement needs. Advanced funds not disbursed in a timely manner must be promptly returned to DOC. When the SF 270 is used to request payment, advances will be approved for periods not to exceed 30 days. DOC may begin using the Department of the Treasury's Automated Standard Application for Payment (ASAP) system. DOC financial assistance awards may contain the ASAP payment clause. In order to receive payments under these awards, recipients will be required to register with the Department of the Treasury and indicate whether or not they will use the on-line or voice response method of withdrawing funds from their ASAP established accounts.

3 Federal and Non-Federal Sharing.

a Awards which include Federal and non-Federal sharing will incorporate an estimated budget consisting of shared allowable costs. If actual allowable costs are less than the total approved estimated budget, the Federal and non-Federal cost share ratio will be calculated as a percentage of Federal and non-Federal approved amounts. If actual allowable costs are greater than the total approved estimated budget, the Federal share will not exceed the total Federal dollar amount of the award.

b The non-Federal share, whether in cash or in-kind, will be expected 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, recipients must meet the cost share commitment over the life of the award.

4 Budget Changes. When the terms of an award allow the recipient to transfer funds among approved direct cost categories, the transfer authority does not authorize the recipient to create new budget categories within an approved budget unless the Grants Officer has provided prior approval. In addition, the recipient will not be authorized at any time to transfer amounts budgeted for direct costs to the indirect costs line item or vice versa, without written prior approval of the Grants Officer.

5 Indirect Costs.

a Indirect costs will not be allowable charges against an award unless specifically included as a line item in the approved budget incorporated into the award. (The term indirect cost has

been replaced with the term facilities and administrative costs under OMB Circular A-21, Cost Principles for Educational Institutions. )

b Excess indirect costs may not be used to offset unallowable direct costs.

c If the recipient has not previously established an indirect cost rate with a Federal agency, the negotiation and approval of a rate will be subject to the procedures in the applicable cost principles and the following subparagraphs:

i. The OIG is authorized to review cost allocation procedures and negotiate indirect cost rates on behalf of DOC for those organizations for which DOC is cognizant or has oversight. The OIG either will negotiate a fixed rate for the recipient or, in some instances, will limit its review to evaluating the procedures described in the recipient's cost allocation methodology plan. The recipient shall submit to the OIG within 90 days of the award start date, documentation (indirect cost proposal, cost allocation plan, etc.) necessary for the OIG to perform its review. The recipient shall provide the Grants Officer with a copy of the transmittal letter to the OIG.

ii. When an oversight or cognizant Federal agency other than DOC has responsibility for establishing an indirect cost rate, the recipient must submit to that oversight or cognizant Federal agency within 90 days of the award start date the documentation (indirect cost proposal, cost allocation plan, etc.) necessary to establish such rates. The recipient must provide the Grants Officer with a copy of the transmittal letter to the cognizant Federal agency.

iii. If the recipient fails to submit the required documentation to the OIG or other oversight or cognizant Federal agency within 90 days of the award start date, the recipient may be precluded from recovering any indirect costs under the award. If the DOC OIG, oversight, or cognizant Federal agency determines there is a finding of good and sufficient cause to excuse the recipient's delay in submitting the documentation, an extension of the 90-day due date may be approved by the Grants Officer.

iv. Regardless of any approved indirect cost rate applicable to the award, the maximum dollar amount of allocable indirect costs for which DOC will reimburse the recipient shall be the lesser of the line item amount for the Federal share of indirect costs contained in the approved budget of the award, or the Federal share of the total allocable indirect costs of the award based on the indirect cost rate approved by an oversight or cognizant Federal agency and current at the time the cost was incurred, provided the rate is approved on or before the award end date.

6 Tax Refunds. Refunds of FICA/FUTA taxes received by a recipient during or after an award period must be refunded or credited to DOC where the benefits were financed with Federal funds under the award. Recipients must agree to contact the Grants Officer immediately upon receipt of these refunds. Recipients must further agree to refund portions of FICA/FUTA taxes determined to belong to the Federal Government, including refunds received after the award end date.

7 Other Federal Awards with Similar Programmatic Activities. Recipients will be required to 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.

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

9 Prohibition Against Assignment by the recipient. Notwithstanding any other provision of an award, recipients may not transfer, pledge, mortgage, or otherwise assign an award, or any interest therein, or any claim arising thereunder, to any party or parties, banks, trust companies, or other financing or financial institutions.

10 Non-Discrimination Requirements. No person in the United States shall, on the ground of race, color, national origin, handicap, religion, age, or sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving financial assistance from DOC.

11 Audits of For-Profit Recipients. In accordance with 15 CFR 14.26 (c) and (d), for-profit hospitals, commercial, and other organizations not covered by the audit provisions of OMB Circular A-133 shall be subject to the audit requirements as stipulated in the award or sub-award document. For-profit recipients of awards exceeding \$100,000 in Federal funding must have a program-specific audit performed. The DOC award may include a line item in the budget for the cost of the audit. If DOC does not have a program-specific audit guide available for the program, the auditor should follow generally accepted government auditing standards and the requirements for a program-specific audit as described in OMB Circular A-133 § 235.

12 Policies and Procedures for Resolution of Audit-Related Debts. DOC has established policies and procedures for handling the resolution and reconsideration of financial assistance audits which have resulted in, or may result in, the establishment of a debt (account receivable) for financial assistance awards. These policies and procedures are contained in the *Federal Register* notice dated January 27, 1989. See 54 FR 4053. The policies and procedures are also provided in more detail in the Department of Commerce Financial Assistance Standard Terms and Conditions.

13 Debts. Any debts determined to be owed the Federal Government shall be paid promptly by the recipient. In accordance with 15 CFR § 21.4, a debt will be considered delinquent if it is not paid within 15 days of the due date, or if there is no due date, within 30 days of the billing date. Failure to pay a debt by the due date, or if there is no due date, 30 days of the billing date, shall result in the imposition of late payment charges as noted below. In addition, failure to pay the debt or establish a repayment agreement by the due date, or if there is no due date, 30 days of the billing date, will also result in the referral of the debt for collection action and may result in DOC taking further action as specified in the terms of the award. Funds for payment of a debt

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

14 Post-Award Discovery of Adverse Information. After an award is made, if adverse information on a recipient or any key individual associated with a recipient is discovered which reflects significantly and adversely on the recipient's responsibility, the Grants Officer may take the following actions:

a Require the recipient to correct the conditions.

b Consider the recipient to be high risk and unilaterally impose special award conditions to protect the Federal Government's interest.

c Suspend or terminate an active award. The recipient will be afforded adequate due process while effecting such actions.

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

15 Competition and Codes of Conduct for Subawards.

a Pursuant to the certification in SF-424B, Paragraph 3, recipients 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 a personal or organizational conflict of interest, or personal gain in the administration of this award and any subawards.

b Recipients must maintain written standards of conduct governing the performance of their employees engaged in the award and administration of subawards. No employee, officer, or agent shall participate in the selection, award, or administration of a subaward supported by Federal funds if a real or apparent conflict of interest is or 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 or other interest in the organization selected or to be selected for a subaward. The officers, employees, and agents of the recipient may not solicit or accept anything of monetary value from subrecipients. However, recipients 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 must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of a recipient.

c All subawards will be made in a manner to provide, to the maximum extent practicable, open and free competition. Recipients must be alert to organizational conflicts of interest as well as other practices among subrecipients that may restrict or eliminate competition. In order to ensure objective subrecipient performance and eliminate unfair competitive advantage, subrecipients that develop or draft work requirements, statements of work, or requests for proposals will be excluded from competing for such subawards.



d For purposes of this award, a financial interest may include employment, stock ownership, a creditor or debtor relationship, or prospective employment with an applicant. 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 act in an impartial manner. It could also result from non-financial gain to the individual, such as benefit to reputation or prestige in a professional field.

16 Minority Owned Business Enterprise. DOC encourages recipients to utilize minority and women-owned firms and enterprises in contracts under financial assistance awards. The Minority Business Development Agency can assist recipients in matching qualified minority-owned enterprises with contract opportunities.

17 Subaward and/or Contract to a Federal Agency. Recipients, subrecipients, contractors, and/or subcontractors may not sub-grant or sub-contract any part of an approved project to any Federal department, agency, instrumentality, or employee thereof, without the prior written approval of the Grants Officer.

18 Foreign Travel. Recipients must comply with the provisions of the Fly America Act, 49 U.S.C. § 40118. The Fly America Act requires that Federal travelers and others performing U.S. Government-financed foreign air travel must use U.S. flag 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 carrier service will not accomplish the agency's mission. The implementing Federal Travel Regulations are found at 41 CFR §§ 301-10.131 through 301-10.143.

19 Purchase of American-Made Equipment and Products. Recipients are hereby notified that they are encouraged, to the greatest extent practicable, to purchase American-made equipment and products with funding provided under DOC financial assistance awards.

20 Intellectual Property Rights.

a Inventions. The rights to any invention made by a recipient under a DOC financial assistance award are determined by the Bayh-Dole Act, Public Law 96-517, as amended, and codified in 35 U.S.C. § 200 *et seq.*, except as otherwise required by law. The specific rights and responsibilities are described in more detail in 37 CFR Part 401 and in particular, in the standard patent rights clause in 37 CFR § 401.14.

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

c Data, Databases, and Software. The rights to any work produced or purchased under a DOC Federal financial assistance award are determined by 15 CFR § 24.34 and 15 CFR § 14.36 . Such works may include data, databases or software. The recipient owns any work produced or purchased under a DOC Federal financial assistance award subject to DOC s right to obtain, reproduce, publish or otherwise use the work or authorize others to receive, reproduce, publish or otherwise use the data for government purposes.

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

21 Seat Belt Use. Pursuant to EO 13043, recipients should encourage employees and contractors to enforce on-the-job seat belt policies and programs when operating recipient/company-owned, rented or personally-owned vehicles.

22 Research Involving Human Subjects. All proposed research involving human subjects must be conducted in accordance with 15 CFR Part 27, Protection of Human Subject. No research involving human subjects is permitted under any DOC financial assistance award unless expressly authorized by the Grants Officer.

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

24 Minority Serving Institutions (MSIs) Initiative. Pursuant to EOs 12876, 12900, and 13021, DOC is strongly committed to broadening the participation of MSIs in its financial assistance programs. DOC s goals include achieving full participation of MSIs in order to advance the development of human potential, strengthen the Nation s capacity to provide high-quality education, and increase opportunities for MSIs to participate in and benefit from Federal financial assistance programs. DOC encourages all applicants and recipients to include meaningful participation of MSIs. Institutions eligible to be considered MSIs are listed on the Department of Education Web site which is located at <http://www.ed.gov/offices/OCR/minorityinst.html>.

25 Access to Records. The Inspector General of the DOC, or any of his or her duly authorized representatives, shall have access to any pertinent books, documents, papers and records of the parties to a grant or cooperative agreement, 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. An audit of an award may be conducted at any time. Recipients that are subject to OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations, and that expend \$300,000 or more annually in Federal awards shall have an organization-wide audit performed, unless a program-specific audit is determined by DOC to be more appropriate. Other recipients will be subject to the audit requirements as stipulated in the award or subaward document.

(16) Program-Specific Requirements. Notices should contain program-specific requirements, such as environmental compliance provisions for construction projects and policies on patents, human subjects, care and use of laboratory animals, and biosafety measures, as applicable, for research projects.

(17) Administrative Procedure Act and Regulatory Flexibility Act. Because notice and comment are not required under 5 U.S.C. § 553, or any other law, for notice relating to public property, loans, grants, benefits or contracts (5 U.S.C. §553(a)), a Regulatory Flexibility Analysis is not required for financial assistance notices, unless specifically required under the funding legislation.

(18) The Supplementary Information should also address EO 13132 (Federalism) and EO 12866 (Regulatory Planning and Review).

(19) Information Collection. Notwithstanding any other provisions of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act, unless that collection displays a current valid OMB control number.

3. Signature. The signature of the person authorized to sign a notice submitted for publication in the *Federal Register* must be placed at the end of the document. The signature must be handwritten in ink, and the name and title of the person signing must be typed directly beneath the signature.

**D. Congressional Review of Final Rules and Interim Final Rules.** For purposes of Congressional review under Chapter 8 of Title 5, United States Code, agencies are required to submit each final and interim final rule to both Houses of Congress and the GAO before the final or interim final rule can take effect. Further, when an agency submits a final or interim final rule, the agency is also to provide GAO, and to make available upon request to each House of Congress: (1) a complete copy of the cost/benefit analysis of the rule, if any; (2) information concerning the agency's actions under the Regulatory Flexibility Act; (3) information concerning the agency's actions under the Unfunded Mandates Reform Act; and (4) any other relevant information or requirements under any other law and any other EO. Generally, for Federal assistance funding notices, this is translated into a form to each house of Congress and GAO,

enclosing a copy of the *Federal Register* notice with each form; and with the GAO submission, also enclosing a copy of the EO 12866 determination of significant or not significant. The final or interim final rule should be sent when sending the document to the Office of Federal Register, but must be received before the rule can be made effective. If you have any questions about the Congressional review procedures, please consult with the AGC/L&R. The AGC/L&R should be sent a copy of one of the signed forms. A sample checklist and form for this purpose can be accessed on the Internet at the following Web site: <http://www.gao.gov>.

**E. RFA Checklist.** A checklist for use as an easy reference in confirming that all required information is included in notices can be found in the Exhibits Section of this Manual.

## 20. MULTI-YEAR FUNDING PROCEDURES

**A. General.** This chapter prescribes policies for incrementally funding multi-year awards when full funding of the complete award period is not available at the beginning of the award period. Multi-year funding allows Federal funds for a multi-year award to be provided in increments or by allotment, usually on an annual basis. If the operating unit is using time-limited appropriations, there must be separate and distinct funding periods within the multi-year award period.

**B. Multi-Year Awards.** Multi-year awards are awards which have an award period of more than 12 months of activity. Multi-year awards are partially funded when the awards are approved, and are subsequently funded in increments. The Department encourages long-range program planning for the award and administration of financial assistance actions. One mechanism for facilitating this goal is funding through multi-year awards. This particularly pertains to awards that support research projects that may span several years. One of the purposes of multi-year awards is to reduce the administrative burden on both the applicant and the operating unit. For example, with proper planning, one application can suffice for the entire multi-year award period. It is the Department's policy that the period of activity of multi-year awards should not exceed five years. Grants Officers should establish additional internal policies for consistent selection and approval of programs and awards that may be funded under these multi-year funding procedures.

### **C. Multi-Year Funding Principles.**

**1. Reliability and Predictability.** Multi-year funding may be considered for programs or long-term awards where funding for the subsequent year(s) is anticipated but not provided at the time the award is approved and where the estimated budget for future funding periods can be forecast with some degree of reliability. These procedures should not be used for programs or long-term awards where the funding allocation may substantially change (either increase or decrease) from initial projections. Multi-year funding is provided by adding allotments of funds, usually on an annual basis, to extend the funding period (or in the case of time limited funds add funding periods) within the previously approved award period.

**2. Competition.** Recipients of multi-year awards should be selected after full and open competition. However, projects under multi-year funding awards do not re-compete each year even though the awards may be funded annually. At the outset the Grants Officer would approve the award for an award period of more than one year (typically three to five years), and continuation amendments to add funding and extend the funding period (or add funding periods if time limited funds) are later approved with less administrative processing by the recipient, the Program Office, and the Grants Office. This feature - competing only once for a multi-year period of support - permits the grantee and the operating unit to more reliably plan for future years. The nature of allotting the funding on an annual basis preserves the ability of the operating unit to discontinue support at points during the award period if the government's interest requires it.

**3. Request for Applications.** Program Offices must clearly identify in their annual program notice to the public and/or RFA when multi-year funding is available under the program. The notice and RFA must clearly state that funding for each year's activity is contingent upon the availability of funds from Congress, satisfactory performance, and is at the sole discretion of the agency. The RFA should solicit applications covering the entire multi-year period and must identify the amount currently available as well as the amounts projected to be available in the future. Instructions for applying for a multi-year award must be contained in the notice.

**4. Exceptions.** Not all programs or awards are good candidates for multi-year funding. Grants Officers must exercise good judgement in determining when to approve multi-year awards. Multi-year funding is not appropriate and a fully funded award must be used in the following circumstances:

a. The project is exclusively for construction, alterations or renovations, or acquisition of property;

b. At the time of award, the total period of DOC support for the project is planned to be less than 24 months; or,

c. The award is funded with fixed-year appropriations and the Grants Officer determines that the scope of work is not severable, the application must be fully funded at the time of award approval.

**5. No-Year Funds.** The initial funding period and subsequent continuation amendments extending the funding period should usually be for 12 months but the initial funding period may vary from 12 months in order to provide for the continuation of the funding period at an advantageous date, such as the end of the grantee's fiscal year or to coincide with phases of the project contained in the proposal and budget. Since there is only one continuous funding period for an award made with no-year appropriations, the applicant has more flexibility in carrying over funds throughout the entire award period.

**6. Fixed-Year Funds.** Awards funded with time limited funds may be considered for multi-year funding by the Grants Officer only if the application includes a corresponding summarized scope of work and budget which clearly indicate that each year's activities can be separated easily into annual tasks of meaningful work (i.e., solid accomplishments) to be supported by the funds obligated for the designated funding period. Each funding period must be discrete and clearly distinguished from any other funding period. Funding periods are ADDED with the continuation amendment, not merely extended.

a. A funding period for fixed-year funds may not exceed the amount of time limited by statute (i.e., a three-year award would have three annual funding periods).

b. Beginning and ending dates for projects using fixed-year funds may not exceed the amount of time limited by statute.

**7. Amendments.** The commitment to obligate the amount of available funding for the next funding period with continuation amendments shall be clearly conditioned upon the availability of funds, satisfactory progress by the grantee, and the Program Office's determination that continued funding is in the best interest of the government.

a. An amendment to obligate prospective funding available shall be made on Form CD-451, Amendment to Financial Assistance Award, prior to the expiration of each funding period. The Grants Officer shall execute the amendment after recommendation by the Program Officer that the performance under the current funding period is satisfactory and funds are available. The Program Officer should submit to the Grants Officer any continuation application with budget revisions, if applicable, a written recommendation, and certification of funding availability at least 30 days prior to the expiration of the funding period.

b. The recipient should submit an amended application to the Program Officer for review and recommendation to the Grants Officer for approval before the end of the current funding period if the upcoming funding period will have a change in the scope of work or an increase in the funding level from that which was last approved. Otherwise, there is generally no requirement for the recipient to submit subsequent full applications under a multi-year award period.

c. Unobligated balances of no-year funds will automatically be carried over upon the extension of the funding period. (This does not apply to awards funded with fixed-year funds.) For unobligated balances of no-year funds, the SF-269, Financial Status Report, will be used as the basis for determining if there is any unobligated balance to be carried over at the end of the current funding period.

d. It is important to distinguish clearly between (1) stopping support of a project by not extending the funding period with continuation amendments, and (2) termination of a grant. A grant gives the recipient legal authority to obligate the funds awarded. The government may unilaterally terminate a grant only if the grantee has materially violated the grant's terms. The Department must give recipients due process prior to terminating a grant for violation of its terms. Except where required by statute, recipients have no right to a formal appeal process when a continuation is denied. This is because neither the approval nor extension of a funding period, award period, or the award of a grant gives the recipient any legal entitlement to receive additional awards. Awards with multi-year funding will generally be funded in allotments adding to or extending the funding period. The new award document (Form CD-450) initially obligates only the first allotment of funds. Within 30 days of the end of each funding period, the Program Officer will determine whether to recommend to the Grants Officer a continuation amendment which adds funds to the award and extends the funding period.

**D. Preparation of New Award.** Following are instructions for the preparation of Form CD-450, "Financial Assistance Award," and Special Award Conditions for awards with multi-year funding.

1. The CD-450, "Financial Assistance Award," for a multi-year award shall be prepared as reflected in the guidelines and procedures and described below:

a. The total amount of funding shown in the upper right-hand corner of the Form CD-450 should reflect the amount, both Federal and non-Federal, that is currently available for obligation. For example, a multi-year award with a total three (3) year budget of \$3,900,000 (three equal annual increments of \$1,000,000 as the Federal share of cost and \$300,000 as the recipient share of cost) will show the portion of Federal funding that is currently available for obligation (\$1,000,000) and at least the corresponding portion of the non-Federal amount.

b. The award period should reflect the entire multi-year period during which Federal sponsorship begins and ends.

c. In order to make it clear that future support is anticipated, the following shall be included in the special award conditions:

(1) No-Year Funds.

The award period and budget(s) incorporated into this award cover a \_\_\_\_-year period for a total amount of \$\_\_\_\_\_ in Federal funds. However, Federal funding available at this time is limited to \$\_\_\_\_\_ for this funding period. Receipt of any prospective funding is contingent upon the availability of funds from Congress, satisfactory performance, continued relevance to program objectives and will be at the sole discretion of the Department of Commerce. The Department of Commerce is not liable for any obligations, expenditures, or commitments which involve any amount in excess of the Federal amount presently available. The recipient will be responsible for any and all termination costs it may incur should prospective funding not become available. No legal liability will exist or result on the part of the Federal Government for payment of any portion of the remaining funds which have not been made available under the award. Notifications affecting funding or notice of non-availability of additional funding for prospective years will be made only by the Grants Officer. The amendment to obligate prospective funding available shall be made on Form CD-451, "Amendment to Financial Assistance Award," if at all possible prior to the expiration of each year's activities.

The award period for this action is \_\_\_\_\_ through \_\_\_\_\_.  
The funding period for this action is \_\_\_\_\_ through \_\_\_\_\_. [generally first year]  
The funding period for this action may be extended through \_\_\_\_\_. [No-year funds are available for obligation from the beginning of the award through the end of the funding period. With each year's amendment to add funds, the funding period is EXTENDED from the date of award, so that by the last year of the award, the 5-year project period equals the 5-year funding period. Discrete funding periods are not required when using no-year funds.]



(2) Fixed-Year Funds

The award period and budget(s) incorporated into this award cover a \_\_\_\_-year period for a total amount of \$ \_\_\_\_\_ in Federal funds. However, Federal funding available at this time is limited to \$ \_\_\_\_\_ for this funding period. Receipt of any prospective funding is contingent upon the availability of funds, satisfactory performance, continued relevance to program objectives, and will be at the sole discretion of the Department of Commerce. The Department of Commerce is not liable for any obligations, expenditures, or commitments which involve any amount in excess of the Federal amount presently available. The recipient will be responsible for any and all termination costs it may incur should prospective funding not become available. No legal liability will exist or result on the part of the Federal Government for payment of any portion of the remaining funds which have not been made available under the award. Notifications affecting funding or notice of non-availability of additional funding for prospective years will be made only by the Grants Officer. The amendment to obligate prospective funding available shall be made on Form CD-451, Amendment to Financial Assistance Award, prior to the expiration of each year s activities.

The award period for this action is \_\_\_\_\_ through \_\_\_\_\_.  
The funding period for this action is \_\_\_\_\_ thorough \_\_\_\_\_. [The period of time when Federal funding is available for obligation by the recipient. A funding period for fixed-year funds may not exceed the amount of time limited by statute (e.g., a three-year award would have three distinct annual funding periods).]

[**Note:** For time limited funds, specify each funding period separately, identifying funds available for those periods.]

Prospective funding NOT TO EXCEED: \$ \_\_\_\_\_

through	\$xxx,xxx, second year.
through	\$xxx,xxx, third year.
through	\$xxx,xxx, fourth year.
through	\$xxx,xxx, fifth year.

2. An itemized budget must be incorporated into the award which includes the Federal and non-Federal share of funding that is currently available.

3. **[ONLY REQUIRED FOR FIXED-YEAR FUNDS:]** A corresponding summarized scope of work and any other documents incorporated into the award must reflect each year's activities which clearly indicate that they are severable and can be separated easily into annual increments of meaningful work which represent solid accomplishments. The funding period may not merely be extended, but must specify start and end date.

**E. Preparation of Amendment(s).** Following are instructions for the preparation of amendments for awards with multi-year funding.

1. As prospective funding becomes available for extended or additional funding periods, the Grants Officer shall notify the recipient by using the Form CD-451, "Amendment to Financial Assistance Award," of the obligation of prospective funding. This should be done prior to the expiration of the current approved funding period.

2. The Form CD-451, "Amendment to Financial Assistance Award" shall be prepared as follows:

a. The amendment provides \$\_\_\_\_\_ in Federal funds for the continued funding [if time limited funds, specify second/third/fourth/fifth year] of this multi-year award for a total of \$\_\_\_\_\_. The amount to be entered into the "Previous Estimated Cost" column should be the aggregate amount that has been obligated under the award. The amount to be entered into the "Add" column is the amount which is being obligated with this action. In addition, the following terms shall be included in the special award conditions:

This amendment provides \$\_\_\_\_\_ in Federal funding for the [if time limited funds specify second/third/fourth/fifth] year of this multi-year award for a total of \$\_\_\_\_\_. Any commitments, obligations, or expenditures in excess of that amount of Federal funds will be made at the recipient's risk. The funding period for this amendment is extended through (date). [IMPORTANT: For Fixed-Year Funds, the funding period should reflect the start date and end date of the amendment. The funding period for this amendment is \_\_\_\_\_ through \_\_\_\_\_.] Future funding is contingent upon the availability of funds, satisfactory performance on the current and/or previous award, and is at the sole discretion of the Department of Commerce.

b. Work to be performed with this funding should correspond to that identified in the original application and proposal, with any approved revisions. The original application, proposal, and any approved revisions will be incorporated into the award by reference in this amendment.

3. If the work to be performed with the prospective funding does not correspond to that identified in the original application, along with the proposal and any approved revisions, the recipient should submit a request for approval of any revisions to the last approved budget and work to be performed. This request should be submitted to the Program Officer for approval by the Grants Officer. It should be noted that any revision to the work to be performed should not change the basic scope of work originally approved. Changes to the approved scope of work must be incorporated into an award by the Grants Officer in a formal amendment.

4. In the event that funding does not become available or the determination is made not to provide additional funding for prospective year's activities, the Grants Officer shall notify the recipient in writing prior to the expiration of the current funding period.

5. While the Department reserves the right not to provide all or a portion of a prospective year's funding, every effort should be made to minimize changes to the originally approved funding levels.

a. If funding levels increase over the amount stipulated in the special award condition(s), the recipient must submit a supplemental application for the amount of the increase along with a new budget and required certifications. [Caution: A significant increase in funding may lead to an unauthorized change in the scope of work.]

b. If funding levels are significantly decreased, the recipient must submit a request for budget revision to the Program Officer. [Caution: A significant decrease in funding could lead to an unauthorized change in the scope of work.] The Program Officer will review the request and make written notification to the Grants Officer who will notify the recipient of the Department's approval or disapproval. If the Grants Officer approves the revised (decreased) budget, the Form CD-451, "Amendment to Financial Assistance Award," shall be used.

## 21. GUIDELINES AND PROCEDURES FOR NAME CHECK REVIEWS

**A. Purpose.** This chapter provides guidance for the initiation of the name check process and review, evaluation, and management of name check information by program and grants administrative officials throughout DOC. The Department's policy is to protect both Federal funds and the integrity of its financial assistance programs by making awards only to recipients that are competently managed, responsible and committed to achieving the award objectives. The name check process is a tool designed to assist program and grants administration officials in determining the responsibility, financial integrity and management principles of an organization proposed for funding, i.e., whether DOC should risk providing its funds to the entity. Through the name check process the OIG collects background information on key individuals associated with proposed financial assistance recipient organizations. The name check identifies those principals associated with the proposed recipient organizations for whom a criminal record or other adverse information has come to the attention of the DOC OIG. The name check process also includes an inquiry into the financial status of an individual and/or organization. The financial analysis may be accomplished through review of the business information report and/or the credit report, as appropriate.

**B. Authority.** The name check review is required for all proposed financial assistance recipients except as provided by the terms of DAO 207-10, Inspector General Investigations, Section E., Exemptions, of this chapter identifies potential recipients and/or individuals for whom name check reviews are not required. Section F., Frequency, of this chapter addresses the issue of name check reviews related to continuation and renewal funding.

### **C. Responsibilities.**

1. The OIG is responsible for performing the name check review and informing the Grants Officer of the results. The OIG may make recommendations to the Grants Officer on the name check findings.

2. The Program Officer is responsible for initiating the name check process as outlined in these procedures. The Program Officer shall recommend to the Grants Officer what, if any, action should be taken as a result of significant adverse information revealed during the name check review.

3. The Grants Officer is responsible for ensuring that the results of the name check review are considered in determining whether financial assistance should be provided. When significant adverse information is revealed as a result of the name check review, the Grants Officer shall consult with the Program Officer, OGC/FALD, and the OIG prior to making a final determination.

**D. Applicability.** The recipient's organizational structure determines which individuals within the organization require a name check review. Submission of Form CD-346, Applicant for Funding Assistance, is required for the following key individuals:

1. Sole proprietorship - the proprietor;
2. Partnership - each partner (general and limited) (for certified public accounting firms, only those individuals who have authority to speak for and/or commit the recipient in the management of the award and/or expend funds are subject to the name check review);
3. Corporation - each officer; each individual owning or controlling at least 20 percent of the enterprise; the chief financial manager; the project manager; and any other person or entity who has authority to speak for and/or commit the recipient in the management of the award and/or expend funds;
4. Joint venture - each officer of each company in the joint venture; each individual owning or controlling at least 20 percent of each company in the joint venture; the chief financial manager of each company in the joint venture; the project manager; and any other person or entity who has authority to speak for and/or commit the recipient in the management of the award and/or expend funds; and
5. Non-profit organization - executive director, project manager, chief financial manager and any other person or entity who has authority to speak for and/or commit the recipient in the management of the award and/or expend funds.

**E. Exemptions.** The following individuals who are acting on behalf of their respective entities in applying for assistance are exempt from the name check review process:

1. officials of state and local governments;
2. officials of accredited colleges and universities; and
3. officials of economic development districts designated by EDA, including those entities whose designations are pending.

In addition to the above, all elected officials of state and local governments who are serving in capacities other than their elected capacities when applying for assistance are also exempt. Furthermore, in accordance with DAO 207-10, the OIG may determine that a name check is unnecessary or impracticable in whole or in part for a particular program or under particular circumstances. A specific request for an exemption should be submitted to the OIG with a copy of the request provided to the OEAM.

**F. Frequency.** A name check shall be conducted for each non-exempt proposed financial assistance recipient at least once every three (3) years. For those programs characterized by continuation funding beyond three years and/or renewals of continuing project activity, name checks on individuals and organizations shall be conducted at least once every three (3) years. The three-year period begins with the effective date of the initial award. In addition, if there is a change in the status of the organization and/or key individuals, or the Program Officer, OIG, or Grants Officer believes there is good reason to conduct a review sooner, a name check review may be required more frequently. When a key individual joins a currently funded organization

for which the OIG conducted a name check review within the last three (3) years, the name check review on the new individual may be limited to the security-related and credit reports. The OIG will determine the appropriate scope of the review to be performed upon receipt of the request for a name check review.

**G. DOC Financial Assistance Standard Terms and Conditions.** Because it is initiated during the final approval process, the name check review is often not complete prior to award. Therefore, to ensure that the recipient fully understands the Department's authority to take action should significant adverse information be revealed as a result of the name check review, information about the name check review is included in the annual *Federal Register* notice announcing the DOC pre-award notification requirements and the appropriate language is contained in the DOC ST&Cs and incorporated in all awards.

**H. The Process.** Procedures for the initiation, review and evaluation of name check information are as follows:

<u>STEP</u>	<u>OFFICIAL</u>	<u>ACTION</u>
1.	Program Officer	Send the appropriate number of Forms CD-346, "Applicant for Funding Assistance," to the proposed recipient for completion by each key individual. (This form should be part of the application.) In a competitive financial assistance program, the forms may be sent to only the organization proposed to receive the award.
2.	Key Individuals	Each key individual for of the proposed recipient organization must complete Form CD-346 and return it with an original signature to the Program Officer.
3.	Program Officer	Forward Forms CD-346 along with the recommended award package to the Grants Officer for final processing.
4.	Grants Officer	Indicate the proposed award number on the Form CD-346. Make a copy for the official award file. Send to the OIG the original signed forms along with a memorandum requesting a name check review. Ensure that all applicable awards incorporate the DOC ST&Cs which include the name check requirements.
5.	OIG	Perform the name check review and notify the Grants Officer of the results through a transmittal memorandum. The transmittal memorandum will identify the proposed award number. The OIG may attach financial reports to the transmittal memorandum. If not attached, copies of financial reports and Federal Bureau of Investigation and/or related reports will be available for review at the request of

the Grants Officer. The transmittal memorandum will state whether the OIG files contain "pertinent" information that should be examined.

6. Grants Officer
  - a. Review the OIG memorandum and, when provided, other OIG material to ensure that the information is complete, i.e., that sufficient information has been provided upon which to make a determination from an administrative responsibility perspective. The Grants Officer may contact the OIG for clarification of investigative issues when the results indicated are inconclusive (e.g., there is an arrest record but there is no record of conviction). When information is complete but other questions arise, the Grants Officer may contact the OIG, the Program Officer, the recipient, or the key individual for clarification or assistance. Ensure that the OIG transmittal memorandum documents are used for administrative review purposes only. All OIG memoranda and/or documents must be returned to the OIG upon completion of review.
  - b. For those name check reviews which involve significant adverse findings and formal action by the Grants Officer, deliberative memoranda and correspondence will be retained in the official award file along with a copy of the "Name Check Review Decision Memorandum." A copy of the decision memorandum will also be provided to the Program Officer.

**I. Evaluation of Name Check Results.** Because reviewing and interpreting name check material, comprehending its impact, and determining an appropriate course of action are judgment calls, only experience, maturity, and a common sense approach will provide the proper foundation for an appropriate and sensible evaluation of name check documents. As it is not always possible to predict whether an award would be directly affected by adverse name check information, the following factors will assist in evaluating the recipient's competency, management honesty, and financial integrity:

1. Indications of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
2. Any other offense indicating a lack of business integrity, dishonesty, mismanagement, or abuse;
3. Indications of financial instability, i.e., insolvency, threat of insolvency, bankruptcies, suits, judgments, tax liens, poor credit rating, inadequate internal financial controls, chronic delinquency in payments to the Internal Revenue Service, etc.;

4. Other adverse situations of a serious nature which provide doubt about the entity's ability to perform satisfactorily;
5. Consideration should be given to the seriousness of findings relative to the role of the involved individual in the organization or the proposed project;
6. For currently funded projects, the stage in the award cycle should be considered. Is the recipient performing satisfactorily? Do the progress or financial reports reflect any areas of concern? Are the required reports submitted according to schedule?
7. In addition, any information which could be potentially embarrassing to the Department should be carefully weighed.

**J. Name Check Categories.** The following categories will assist in determining an appropriate course of action:

1. No adverse findings: For those name check reviews where there are no adverse findings, the Grants Officer will review the OIG transmittal memorandum summarizing the results of the name check.
2. Pertinent findings: When name check reviews reveal adverse information, the OIG Transmittal Memorandum will summarize the results of the name check and make suggestions for actions to be taken. The Grants Officer shall review and evaluate the material from an administrative responsibility perspective along with the OIG suggested actions. Although the OIG's memorandum may indicate "pertinent" information, the Grants Officer may determine that the information has no impact on the funding decision and provide "clearance." A "Name Check Review Decision Memorandum" will be prepared for the official award file which will indicate the date on which the name check process was completed and the action taken by the Grants Officer.
3. Sensitive Information: When the OIG notifies the Grants Officer that sensitive material is available for review by the Grants Officer and the Program Officer but not for release outside the OIG, the material will be reviewed by appropriate personnel on site at the OIG office. A "Name Check Review Decision Memorandum" will be prepared for the official award file which will indicate the date on which the name check process was completed and the action taken by the Grants Officer.
4. Adverse findings: When the name check review reveals significant adverse information, the OIG memorandum will contain recommendations of specific actions which should be taken by grants officials. The Grants Officer will request a written recommendation on the appropriate course of action from the Program Officer when significant adverse information surfaces. The Grants Officer will provide copies of the OIG transmittal memorandum to the Program Office.
  - (a) Name check material may be provided to the Program Officer for administrative review purposes only.



- (b) Prior to issuing the final decision the Grants Officer will notify the OIG of the proposed course of action on the OIG recommendations.
- (c) When a final decision has been reached, the Grants Officer will prepare a "Name Check Review Decision Memorandum" for the official award file which will indicate the date on which the name check process was completed and the action taken by the Grants Officer. A copy of the decision memorandum will be provided to the Program Officer and the OIG.
- (d) In addition to various program comments, the Grants Officer should request that FALD review the material and make recommendations. The Grants Officer shall make the final determination upon reviewing OGC, OIG, and Program Officer recommendations.

**K. Grants Officer's Action on Adverse Findings.**

1. When adverse name check results become available prior to award, the Grants Officer may, depending on the nature or severity of the name check information, consider one of the following courses of action:
  - (a) Not make the award;
  - (b) Delay the award until conditions are corrected; or
  - (c) Designate the award as high risk and make the award with special award conditions.
2. When the Grants Officer determines, on the basis of adverse name check results, that the applicant is presently not responsible, the applicant must be notified as required under Chapter 9, Paragraph G.3., of this Manual. The Program Officer will also be provided with a copy of the decision.
3. When adverse name check results become available after the award has been approved, and depending on the significance or severity of the information, the Grants Officer will consider one of the following actions for currently funded recipients:
  - (a) Terminating or suspending the award until corrective action has been taken;
  - (b) Requiring the removal of personnel from association with the management of and/or implementation of the project and require Grants Officer approval of personnel replacements;
  - (c) Requiring the recipient to make changes as appropriate;
  - (d) Designating the recipient as high risk and amending the award to assign special award conditions, as appropriate, including making changes with respect to method of payment and/or financial reporting requirements; or
  - (e) Taking no action (where information has no significant impact on the award).

4. Upon making a final determination concerning a recipient, the Grants Officer will notify the recipient of any action to be taken. For all name check reviews involving the review of significant adverse information and action by the Grants Officer, complete documentation (i.e., deliberative and final action memoranda and/or letters) will be retained in the official award file but any investigative documents will be retained by the OIG. A copy of the decision memorandum will be provided to the OIG and the Program Officer.