

DEPARTMENT OF
TRANSPORTATION

GUIDE TO FINANCIAL
ASSISTANCE

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2020

Department of Transportation Guide to Financial Assistance

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Part I: Basic Information

1.1 Introduction and Structure of this Guide

Annually, the Department of Transportation (DOT) obligates billions of dollars in financial assistance agreements to states, local and tribal governments, universities, non-profit organizations, and for-profit organizations, through the Department’s Operating Administrations

(OAs) and the Office of the Secretary (OST). The DOT Guide to Financial Assistance provides all DOT OAs/OST with a uniform set of minimum policy requirements that personnel must follow throughout the Federal award life cycle. These requirements provide sufficient flexibility to allow compliance by all OAs/OST, regardless of their mission and types of Federal award programs. The Guide will serve as the basis for monitoring and evaluating grants management activities.

The DOT Guide to Financial Assistance updates the policies to align with government-wide changes in regulations and policies.

The DOT Guide to Financial Assistance is comprised of the following Parts.

- Basic information about the guide and financial assistance management;
- Regulatory and crosscutting requirements for awards;
- Program and award administration; and,
- Post award activities, including closeout and auditing.

These Parts generally correspond to the structure of **2 CFR Part 200** and contain references to the Uniform Regulation to provide additional and supporting information.

1.2 DOT Guide to Financial Assistance (the “Guide”)

1.2.1 Purpose

The DOT Guide to Financial Assistance (henceforth referred to as the “Guide”) references policies for use by OAs/OST for ensuring the consistent implementation of legislation, regulations, Office of Management and Budget (OMB) circulars, executive orders (EOs), and Departmental policies related to financial assistance. The foundation of the Guide is comprised of the regulatory requirements found in the government-wide Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (the “Uniform Regulations”) located at **2 CFR Part 200** and adopted by DOT at **2 CFR Part 1201** as well as applicable program rules, and all other regulations, executive orders, and laws for the implementation and management of Federal award programs and the stewardship over public funds.

The Guide is issued and maintained by the Financial Assistance Policy and Oversight Division (FAPO) in the Office of the Senior Procurement Executive (OSPE). In the event of inconsistencies between the information provided in this Guide and provisions of the Uniform Regulations (including DOT codification), the Uniform Regulations will prevail, and the inconsistencies should be reported to FAPO. Furthermore, more specific language contained in the Uniform Regulations shall prevail over more general language contained in this Guide.

FAPO welcomes questions regarding specific topics in the Guide and suggested topics for future editions. OMB reviews Federal agency regulations and implementation of **2 CFR Part 200**, and provides interpretations of policy requirements and assistance to ensure effective and efficient implementation. Any exceptions are subject to approval by the OMB where adequate justification is presented.

1.2.2 Applicability of the Guide

This Guide is not intended to replace the OA/OST policies and procedures, but rather to provide the Departmental standards for the implementation of **2 CFR Part 200**. Each OA and Federal award-making Offices within OST is responsible for developing implementing guidance, procedures and processes that ensure compliance with all Federal award-making requirements, including this Guide. The Guide also helps to identify specific areas where DOT Operating Administrations and Federal award-making Offices should focus on implementing guidance for their respective areas of responsibility.

The term “DOT Component” refers to any Division, Office, or Mode within the Department of Transportation awarding Federal financial assistance (**2 CFR § 1201.2**). In addition, the term “DOT Headquarters” refers to the Secretary of Transportation or any office designated by the Secretary to fulfill headquarters' functions within any office under the Secretary's immediate supervision. Secretarial delegations are defined under **49 CFR Part 1**. For the purposes of this Guide, the Division, Office, or Mode (defined as “DOT Component” in Part 1201) is referred to as an Operating Administration (OA) or Secretarial Office (OST). Currently, the OAs/OST subject to this Guide are:

- Federal Aviation Administration (FAA),
- Federal Highway Administration (FHWA),
- Federal Motor Carrier Safety Administration (FMCSA),
- Federal Railroad Administration (FRA),
- Federal Transit Administration (FTA),
- Maritime Administration (MARAD),
- National Highway Traffic Safety Administration (NHTSA),
- Office of Inspector General (OIG),
- Office of the Secretary of Transportation (OST),
- Pipeline and Hazardous Materials Safety Administration (PHMSA), and
- St. Lawrence Seaway Development Corporation (SLSDC).

This Guide provides guidance on grants, cooperative agreements, and Other Transactions Authorities (OTA) in the form of a grant or cooperative agreement, but not loans, loan guarantees, interest subsidies, insurance, direct payments, or OTAs in the form of a contract. Although 2 CFR Part 200 may apply, in whole or in part, to some of the above types of financial assistance, this Guide does not.

This Guide is effective for awards issued on or after January 1, 2020.

1.2.3 Exceptions:

The OA/OST making Federal awards to non-Federal entities must implement the language in the Subpart C - Pre-Federal Award Requirements and Contents of Federal Awards through Subpart F - Audit Requirements unless different provisions are required by Federal statute or are approved by DOT Headquarters. DOT Headquarters may grant exceptions to this and other requirements under Part 1201 on a case-by-case basis, and granted only as determined by the Secretary of Transportation (**2 CFR § 1201.102**).

1.2.4 Review Date

To ensure consistency with OMB and other requirements, as a matter of DOT policy, FAPO will review the DOT Guide to Financial Assistance no less than every 5 years, after the effective date of the Guide. If revisions to **2 CFR Part 200** provide conflicting or significant information that affects the Guide, then FAPO may make corresponding changes to the Guide, in between FAPO's full review of the Guide.

1.2.5 Terminology used in the Guide

For consistency, the Guide will use the following language:

- The Guide: This refers to the Department of Transportation Guide to Financial Assistance.
- DOT Components: The awarding agencies will be referred to as Operating Administrations(OAs) and Secretarial Offices (OST). If a specific OA or OST is being addressed in the policy, the agency will be identified.
- Non-Federal entity: This term refers to a state, local government, Indian tribe, institution of higher education (IHE), nonprofit or for-profit organization receiving an award from a Federal agency, whether they are a recipient or subrecipient (**2 CFR § 200.69**). As policy, unless otherwise noted in OA/OST policy described in section 1.3.3, for-profit organizations and foreign entities may be deemed non-federal entities.
- Federal Award: This term refers to grant agreements and cooperative agreements as defined in **2 CFR § 200.38**, unless specifically stated otherwise. This also applies to “Other Transactions Authorities (OTAs)” in the form of a grant or cooperative agreement. This guide does not apply to contracts, loans, loan guarantees, interest subsidies, insurance, direct payments, or OTAs in the form of a contract.
- Award Agreement: This term is used to represent the federal award instrument as defined in **2 CFR § 200.38(b)**.

1.3 Government- and DOT-wide Regulatory Sources for Federal Awards Administration

Regulations for Federal awards administration have been standardized and located at **2 CFR Part 200**. All Federal agencies have been required to codify these regulations.

1.3.1 Financial Assistance Regulations in the Federal Government

Effective December 26, 2014, the Office of Management and Budget (OMB) issued the “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards” located at **2 CFR Part 200**, as government-wide regulations. These regulations supersede:

- A-21, “Cost Principles for Educational Institutions” (2 CFR part 220);
- A-87, “Cost Principles for State, Local and Indian Tribal Governments” (2 CFR part 225);
- A-89, “Federal Domestic Assistance Program Information”;
- A-102, “Grant Awards and Cooperative Agreements with State and Local Governments”;

- A-110, “Uniform Administrative Requirements for Awards and Other Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations” (2 CFR Part 215);
- A-122, “Cost Principles for Non-Profit Organizations” (2 CFR Part 230);
- A-133, “Audits of States, Local Governments and Non-Profit Organizations”; and
- Those sections of A-50 related to audits performed under Subpart F—Audit Requirements of 2 CFR 200.

Federal awards executed prior to December 26, 2014 may continue to be subject to the above circulars through the expiration dates of such agreements.

1.3.2 Adoption of 2 CFR Part 200 and Supersession of DOT regulations

The Department of Transportation adopted 2 **CFR Part 200** in its entirety in **2 CFR Part 1201**. In doing so, this part supersedes and repeals the following sections:

- 49 CFR part 18—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments; and,
- 49 CFR part 19—Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-Profit Organizations.

Federal awards executed prior to December 26, 2014 may continue to be subject to 49 CFR parts 18 and 19 through the expiration dates of such agreements.

1.3.3 Applicability of 2 CFR Part 200

As a financial assistance issuing organization, the DOT is required to comply with all Federal requirements. Non-Federal entities are required to comply with requirements in **2 CFR Part 200** regardless of whether the non-Federal entity is a recipient or subrecipient of a Federal award. In addition to the general applicability of the regulations, the Table in § 200.101 is to be read along with the other provisions of these compliance requirements (**2 CFR § 200.101**).

As policy, OA/OSTs must establish policies defining when Subparts A through E of 2 CFR § 200 apply to for-profit entities, foreign public entities and foreign organizations, notwithstanding the exceptions listed in **2 CFR § 200.101(c)**. Each OA/OST will develop implementing policies and procedures for handling for-profit or foreign entities.

Part II: Statutory and Regulatory Requirements for Federal Awards Administration

The Federal awards process is governed by requirements originating from statutes, regulations, and policies, both government-wide and DOT-specific. While most of the requirements cut across all types of Federal awards and recipients, there may be some that are unique to the activities, recipients, or to the agencies administering the Federal awards.

2.1 Programmatic, Administrative, Appropriations Act, and Public Policy Requirements Governing Federal Awards Administration

Various requirements may impose restrictions, or dictate the use of financial assistance funding, and may apply to the awarding agencies or the recipients. The OA/OST must prioritize and incorporate the requirements into their awards.

2.1.1 Order of Precedence

The management and implementation of financial assistance awards includes all applicable statutes, regulations, Executive Orders (EOs), OMB circulars, provisions of the Uniform Guidance, any other incorporated terms and conditions, and approved policies and implementing standards necessary to ensure compliance with Federal laws and standards, including both Department-wide and Component (OA and OST) policies, and affect both Grantor (issuing an award) and the Non-Federal entity(award recipient). In the event of conflicting guidance or requirements, the order of precedence for DOT grants and program officials is listed in descending order:

- U.S. Constitution;
- Statute, including appropriations;
- program regulations, (e.g., 23 CFR XXX, 49 CFR XXX) and administrative regulations (e.g., 2 CFR Part 200, 2 CFR Part 1202);
- Federal award agreement terms and conditions; and,
- agency policies (e.g., policy manuals, program guidance).

National and public policy requirements are imposed either by statute, executive order, or annual appropriation. Executive Orders and OMB Guidance are extended to agencies and recipients through regulations, policies and award terms and conditions.

Questions concerning any apparent conflict in requirements or precedence of requirements governing Federal awards should be addressed to the FAPO, who may consult with the Office of the Chief Counsel/General Counsel.

2.1.2 Programmatic Requirements

Programmatic requirements are specific to the program and are based on the authorizing statute, implementing program regulations, and, as appropriate, program guidance. Programmatic requirements may be imposed on OA/OST staff, recipients and subrecipients.

2.1.3 Administrative Requirements

Administrative requirements ensure accountability for the expenditure of Federal funds. They may derive from several sources, including statutes, but the primary source is Office of Management and Budget (OMB) regulations, circulars, and Office of Federal Financial Management (OFFM) policy memoranda.

Administrative requirements are complementary to programmatic requirements and provide the expectations for Federal award-related business and financial management performance. Administrative requirements generally apply to all programs, a particular type of activity, or a particular type of recipient.

2.1.4 Requirements imposed by Appropriations Acts

An annual appropriations 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, the Grants Officer/Funds Certifier must know the agency or agencies and fiscal year(s) of the appropriation being obligated and may need to consult the Office of the Secretary or the Budget Office if the requirements applicable to those appropriations are unknown.

Appropriations acts can impose requirements that apply to the terms and conditions of award and post-award monitoring for specific time periods. For example, generally, a requirement that is included in an annual fiscal year (FY) 2017 appropriations act:

- applies to FY 2017 obligations made on or after the provisions are enacted;
- would apply to those funds regardless of when the funds are obligated by the recipient;
- would apply to prior or subsequent fiscal years only if included in the prior-or subsequent-year appropriation(s), or the language of the act indicates that the requirement applies "hereafter." Under a continuing resolution (CR), the current-year provisions stay in effect until the CR is superseded by an appropriation or other legislative provision contained within the CR; and,
- If a general provision of an appropriation modifies an Authorization (i.e., FAST Act), it is considered permanent.

Appropriations act requirements may, by the terms of the act, be applied to transfers of funds from other accounts, including non-appropriated funds. As the means of ensuring compliance with appropriations act requirements, each award must include a general term that requires recipient compliance with applicable appropriations act requirements.

2.1.5 Public (or National) Policy Requirements

Public (or national) policy requirements governing various subject matters are imposed as a prerequisite to Federal funds and require pre- and/or post-award compliance. The requirements are usually applied government-wide, but they may be considered agency specific, based on types of activities or recipients to which they are directed. The specifics of the requirement will determine how it is incorporated into the Federal award. They may:

- require implementing language for use in Federal awards, e.g., requirements included in EOs; or,
- apply directly to recipients, without separate implementing language, by virtue of incorporation in full text or by reference in application or award requirements.

Public policy requirements include, but are not limited to, the following areas:

- protection of civil rights (e.g., nondiscrimination on the basis of race, color, national origin, religion, sex, age, or disability, sexual orientation, or gender identity);
- use of human subjects or other human substances (e.g., recombinant DNA, embryos, fetal tissue, stem cells) and vertebrate animals in research;

- safety and health (e.g., handling of hazardous and biological materials, use of controlled substances in research, labor standards for construction and non-construction, drug free/smoke-free workplace, and no texting while driving);
- privacy and dignity of individuals (e.g., confidentiality of patient records, the Privacy Act, trafficking in persons, the Health Care Health Insurance Portability and Accountability Act (HIPAA) of 1996);
- the public's right to information (e.g., Freedom of Information Act, Federal Funding Accountability and Transparency Act, and acknowledgment of Federal funding, publications and copyrights);
- preserving natural or other resources (e.g., National Environmental Policy Act, National Historic Preservation Act, impact on human and ecological communities);
- ethics and business integrity (e.g., lobbying prohibitions, restrictions on political activities, suspension and debarment, conflict of interest, research integrity, patents, procurement procedures, disclosing debt, payment of taxes);
- promoting other social or economic objectives (e.g., use of U.S. flag carriers, use of seat belts, prevention of crimes and prohibited activities, domestic protection and counterterrorism); and,
- limiting the burden on taxpayers or the public (e.g., Paperwork Reduction Act, salary cap).

The public policy requirements affecting the Federal award process vary in their applicability, how and when they must be implemented, and the OA/OST's role in monitoring and enforcing them. These differences may affect the scope of the action that may be taken as a result of non-compliance.

The OA/OST must communicate to recipients all relevant public policy requirements, including those established through appropriations provisions, and incorporate the requirements either directly or by reference in the terms and conditions of award.

Beginning February 2, 2019, The National Policy Requirements have been incorporated into SAM.gov. As entities register, or update their registration in SAM.gov for financial assistance they are agreeing to the government-wide policy requirements. Throughout calendar 2019, OAs/OST will need to continue using the SF-424B (assurances for non-construction programs) for entities who have not completed their agreement in SAM.gov. On January 1, 2020, the SF-424B will be obsolete. **Appendix A** outlines the initial certifications and representations to which entities must agree, to be eligible for federal financial assistance.

2.1.5.1 Department-specific assurances and certifications

Non-Federal entities agree to only government-wide policy requirements when registering or updating their registration in SAM.gov. Department-specific policies which require compliance must be inserted into the terms and conditions of the award. **Appendix B** lists the Department-specific certifications and assurances.

2.2 Management and Protection of Federal Award Information and Files

It is the responsibility of each OA/OST to manage and protect Federal award information and official Federal award files in accordance with government- and department-wide retention

procedures. The Federal award information shall be maintained in an accessible format for the minimum retention period, and must protect personally identifiable information (PII) and, the integrity of the project(s).

The OA/OST, in its risk-based assessment, should ensure that recipients are able to protect PII and any controlled unclassified information (**See 2 CFR § 200.205(c)(5)**).

2.2.1 Records management

Financial records, supporting documents, statistical records, and all other non-Federal entity records pertinent to a Federal award must be retained for a period of three years from the date of submission of the final expenditure report or, for Federal awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, respectively, as reported to the OA/OST or pass-through entity in the case of a subrecipient. Each OA/OST and pass-through entity must not impose any other record retention requirements upon non-Federal entities, subject to exceptions found at **2 CFR § 200.333**. OAs/OST should consult **DOT Order 1351.28, Records Management**, which further defines DOT records management responsibilities.

2.2.2 Freedom of Information Act

The Freedom of Information Act (FOIA), (**5 U.S.C. § 552**), generally provides that any person has a right of access to Federal agency records, except to the extent that such records (or portions thereof) are protected from disclosure by exemptions. The DOT regulations implementing the FOIA are found at 49 CFR Part 7 Subpart C—Availability of Reasonably Described Records under the Freedom of Information Act which sets forth rules for DOT OA/OSTs 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 consistent with section 4.5.2.4 of this Guide.

2.2.3 Paperwork Reduction Act

The Paperwork Reduction Act (PRA) (**44 U.S.C. § 3501 and implementing regulations at 5 CFR § 1320**) was enacted to minimize the paperwork burden for private businesses and individuals resulting from the collection of information by or for the Federal government and requires 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 award is considered “conducted or sponsored” by an agency only if:

- The recipient of a Federal award is collecting information at a specific request of the agency; or
- The terms and conditions of the Federal award require specific approval by the agency of the collection of information or the collection procedures.

DOT Order 1351.29 defines Departmental requirements for Paperwork Reduction Act/Information Collection. The Order can be found at <https://cms.dot.gov/sites/dot.gov/files/docs/Paperwork%20Reduction%20Act%20-%20Information%20Collection.pdf>.

2.3 Congressional Grant Notifications Requirements

The Office of the Secretary of Transportation (OST) developed the Grants Notification System (GNS) to streamline the process of making Federal award announcements. GNS is a web-enabled Intranet application, managed by the Office of Governmental Affairs, that permits users to enter, review and approve the release of Federal award-announcement information. It stores information on a single web site designed to easily generate and quickly process Federal award-record listings online. Once Federal award information has been loaded into the system by each originating office and is ready for release, GNS allows a user to send out notifications via email to Departmental staff, Congressional committees, and to individual Members of Congress. Email notifications will inform the notification recipient of actual Federal award specifics.

Congressional appropriations committees have included language in appropriations statutes requiring DOT to provide advance notification to the House and Senate Committees on Appropriation of all Federal award selections, three (3) full business days before the congressional delegations of each state or the Federal award recipients are notified.

OA/OSTs may have provisions that require specific prior notification to be made to Congressional Committees prior to announcing a Federal award. Additional provisions requiring notice to Congress may be found in annual appropriations acts. GNS is accessed at <https://gns.ost.dot.gov>.

2.4 Systems for Federal Award Administration

To manage financial assistance awards and comply with Federal reporting requirements, the OA/OST must interact with several systems.

2.4.1 Grants.gov

Grants.gov is an E-Government initiative established in 2002 to provide a common website for Federal agencies to post discretionary Notices of Funding Opportunities (NOFOs) and for recipients to find and apply to them. The Grants.gov system makes it faster, easier and more cost effective for Federal award applicants to electronically interact with Federal award-making agencies.

Grants.gov offers both a user interface and a system-to-system interface to allow agencies to post synopses of funding opportunities and associated application materials and receive applications. The system also has reporting and information management functionality for Federal users. The Department of Transportation contributes annual funding to Grants.gov through the Working Capital Fund. OAs are encouraged to use Grants.gov for NOFOs.

2.4.2 SAM.gov

The System for Award Management, or SAM.gov, is the official system of the U.S. Government for anyone who makes, manages, and receives a Federal award. SAM.gov will eventually consolidate the information from ten online Federal data systems into a single database, eliminating data overlap while sharing the data across the award lifecycle. SAM's single home page will provide access to all the capabilities previously found in the legacy systems. By

streamlining processes and eliminating the need to enter the same data multiple times, SAM will improve efficiency for all users.

Currently, SAM.gov is a work in progress and improvements can be found at beta.SAM.gov. The OA/OST should check beta.SAM.gov for guidance on the authoritative sources for the respective legacy systems until each is “retired.” The legacy Financial Assistance systems that will be consolidated into beta.SAM.gov are:

- CFDA.gov (Catalog of Federal Domestic Assistance);
- SAM.gov (System for Award Management);
- WDOL.gov (Wage Determinations OnLine);
- FAPIIS.gov (Federal Awardee Performance and Integrity Information System);
- FSRs.gov (Federal Funding Accountability and Transparency Act Subaward Reporting System); and,
- PPIRS.gov (Past Performance Information Retrieval System)

Currently, the OA/OST should use both SAM.gov and beta.SAM.gov to assess the eligibility of applicants for reporting administrative activities. For financial assistance awards, the predominant sections of SAM.gov have been highlighted below.

2.4.2.1 Registration in SAM

All applicants submitting a proposal in response to a Notice of Funding Opportunity (NOFO) must be registered in SAM.gov prior to submitting an application, provide a valid unique entity identifier in the application, and maintain currency on the registration while the Federal Award is active (**Appendix I of 2 CFR 200 § D.3**). Registration is free for applicants and detailed instructions are available at SAM.gov.

2.4.2.2 Assistance Listings (formerly Catalog of Federal Domestic Assistance “CFDA”)

The Assistance Listings (formerly the Catalog of Federal Domestic Assistance or CFDA) is a government-wide compilation of Federal programs, projects, services and activities that provide assistance or benefits to the public that was established in 1977 with the passage of the Federal Program Information Act (P.L. 95-220). The CFDA was established to assist the public with obtaining general information on Federal assistance programs. The change from its former title to the new “Assistance Listings” coincides with the move to SAM.gov in 2018.

2.4.2.2.1 General Information:

- The General Services Administration (GSA) is responsible for the operation and maintenance of the Assistance Listings system within SAM.gov.
- The Office of Management and Budget (OMB) is responsible for providing oversight of the collection of Federal assistance program data, and ensuring that budgetary information provided annually is correct.
- Each OA/OST will designate an Assistance Listings Coordinator. Federal agencies must submit update their assistance programs for inclusion in the Assistance Listings system annually. This is accomplished through coordination with the Departmental Assistance Listings Coordinator in the OSPE.
- All financial assistance funding opportunities must include an Assistance Listings number in the NOFO, and reporting in USAspending.gov.

2.4.2.2.2 Annual Updates

All Assistance Listings will be updated annually, through OSPE, per instructions by OMB and GSA. The annual updates' "Open Period" occurs during the early summer, with an absolute cut-off date. The submitted updates are reviewed by OMB before GSA shuts down the system for the publishing of the Assistance Listings catalog. Failure to update the programs may make the Assistance Listings number inactive, therefore, preventing agencies from meeting their DATA Act reporting requirements in USAspending.gov and notifying the public of funding opportunities in Grants.gov.

2.4.2.2.3 New programs or numbers

All new programs require the Assistance Listings Coordinator to obtain an Assistance Listings number from OSPE by providing a completed Assistance Listings template for review and approval. If programs are being moved from one agency to another, a new Assistance Listing number may not be necessary. If the program is moving entirely to a new office, and there are no outstanding awards under the number, then updating the contact information and agency is all that is necessary. However, if the above is not the case, then a new number may be considered. Coordination with OSPE is necessary before beginning the process.

2.4.2.3 Exclusions (*Suspended or Debarred Entities*)

The Entity Information section of SAM contains information on persons or entities that are suspended, debarred, or otherwise excluded from or ineligible for participation in Federal assistance programs or activities.

The OA/OST must check SAM.gov before doing any of the following (**2 CFR Part 180, Subpart D**):

- entering into a primary-tier covered transaction (**2 CFR § 180.425**);
- approving a principal in a primary-tier covered transaction;
- approving a lower-tier participant when agency approval is required; or,
- approving a principal in a lower-tier transaction if agency approval of the principal is required.
- making a new or renewal award, or adding funds to an award pursuant to a non-competing continuation award or supplemental award;
- awarding a replacement Federal award or making an award to another organization based on the transfer of a principal investigator/project director (PI/PD);
- approving a successor-in-interest; or,
- approving a replacement PI/PD or change in key personnel when a recipient requests prior approval for a change of PI/PD or other key personnel.

For new or renewal awards, the OA/OST must determine if the applicant has indicated in its application that it or any of its principals:

- is presently suspended, debarred, voluntarily excluded, or disqualified;
- has been convicted within the preceding 3 years of any of the offenses listed in **2 CFR § 180.800(a)**; or had a civil judgment rendered against the organization or the individual for one of those offenses within that time period;

- is presently indicted for, or otherwise criminally or civilly charged by a governmental entity (Federal, state or local) with, commission of any of the offenses listed in **2 CFR § 180.800(a)**; or,
- has had one or more public transactions (Federal, state, or local) terminated within the preceding 3 years for cause or default (including material failure to comply).

If the application does not indicate the existence of any of the above circumstances and the OA/OST’s check of SAM.gov and other available information indicates that any of these circumstances exist, this may be considered a false “certification” and the OA/OST may take action against an organization on that basis.

2.4.2.3.1 Effect of exclusions for new or renewal awards

If the SAM.gov review indicates that an organization or individual is suspended, debarred, or proposed for debarment under the FAR (**48 CFR Subpart 9.4**) or voluntarily excluded under **2 CFR § 180.940**, the appropriate grants official must determine whether the exclusion type extends to OA/OST’s awards. If the individual checking SAM is unable to determine the effect of the exclusion, they must work with their Suspension and Debarment Official (SDO) who will contact the Federal agency responsible for the exclusion. Checking the exclusion type is crucial because the exclusion may not be final, may apply to a limited number of agencies, or have other narrower scope, e.g., a disqualification.

If an OA/OST is not precluded from making an award, (e.g., a key person other than the PI/PD is not debarred or suspended and the exclusion does not pertain to the award) the appropriate grants official may proceed with the award but must seek replacement of the key person or, as appropriate, consider whether to impose specific award conditions.

2.4.2.3.2 Effect of exclusions for ongoing awards

If, before adding funding to an ongoing award through a non-competing continuation or supplemental award, the appropriate grants official determines that a recipient or principal is currently suspended or debarred and the exclusion would apply to the OA/OST award, the OA/OST may not add new funding or extend the period of performance of the award (other than through a no-cost time extension) with that recipient, unless the OA/OST obtains an exception from their SDO (**2 CFR § 180.135**).

2.4.3 Past Performance Systems (FAPIS)

OMB and the General Services Administration (GSA) have established an integrity and performance system that includes government-wide data with specified information related to the integrity and performance of entities that are awarded Federal awards and contracts. This system, currently designated as FAPIS, integrates various sources of information on the eligibility of organizations for Federal government awards and is currently available at <https://www.fapis.gov>.

Effective February 16, 2016, each OA/OST must include reviewing and reporting to FAPIS as part of the Grants and Cooperative Agreement process. The following sections in **2 CFR Part 200** support this new requirement:

- **2 CFR § 200.205** has been revised to require Federal agencies to review FAPIIS as part of the pre-award risk assessment before making an award in excess of the simplified acquisition threshold.
- **2 CFR § 200.212** now details the reporting requirements for agencies when a Federal award applicant has been determined to be “not qualified” for a Federal award.
- **2 CFR § 200.213** contains information regarding suspension and debarment.
- **2 CFR § 200.339** and **2 CFR § 200.340** require Federal agencies to provide information to FAPIIS regarding an agency’s responsibility for the termination of an award.
- **Appendix XII** has been added to **2 CFR § 200** to explain the award terms and conditions for recipient reporting on integrity and performance matters.

Pass through entities are not required to post information to FAPIIS. However, since FAPIIS is publicly available, pass-through entities may want to review the system before making a subaward.

2.4.4 Financial and Payments Systems

The financial and payment systems at DOT are managed by the Office of the Chief Financial Officer (CFO).

2.4.4.1 Delphi

Delphi is the official Department-wide Federal financial system used by DOT to achieve effective financial management control and oversight. Delphi utilizes a collection of functionality that is organized under a database schema to support various Federal requirements. Key components of this functionality include:

- Budget Execution configuration and transaction capability (to distribute congressional appropriation funding within an agency);
- Integration with the US Treasury for making disbursements for required payments;
- Integration with US Treasury for providing various financial reporting files and processing Intergovernmental transactions (IPAC);
- Various Federal reporting capabilities (SF-224, Financial Statements);
- Various Federal Specific Accounts Receivable (AR) and Accounts Payable (AP) functionality.

Delphi records all obligation and expenditure transactions for Federal awards and other financial assistance awards that are produced by various grants systems maintained by the Department OAs. Aggregate award and financial assistance data are used to produce consolidated financial statements and to comply with various statutory and regulatory reporting requirements related to awards and expenditures.

2.4.4.2 iSupplier

Oracle iSupplier Portal is a Delphi component that structures supplier communication, requests for reimbursement, and supporting documentation through a secure internet-based portal. iSupplier, allows non-Federal entities the capability to submit invoices, using an online portal. DOT approving officials then review and approve recipient invoice submissions to facilitate a fully electronic payment to recipients.

2.4.4.3 *login.gov*

Access to Oracle's iSupplier Portal is granted through electronic authentication of credentials (name and valid e-mail address) utilizing the GSA credentialing platform *login.gov*. Financial assistance recipients will be required to submit invoices via iSupplier after their account is authenticated via *login.gov*.

2.4.5 Grants Management Systems (GMS)

The OA/OST must have access to an electronic system that supports the awarding, amendment and closing of awards. The system should also include records of programmatic and financial oversight management, communications, process actions and reports, all of which ensure a strong, transparent record for managing public programs and related funding.

Certain key fields from the GMS such as the Federal Award Identification Number (FAIN) are used to integrate and link data against Departmental systems such as the Department's Financial System, and conform to Federal-wide data standards such as the DATA Act Information Model Schema (DAIMS).

2.4.6 *USAspending.gov*

USAspending.gov is the official source for spending data for the U.S. Government. Its mission is to show the American public what the Federal government spends every year and how it spends the money.

The Federal Funding Accountability and Transparency Act of 2006 (FFATA), Pub. L. 109-282, requires that Federal contract, grant, loan, and other financial assistance awards of more than \$25,000 be displayed on a publicly accessible and searchable website to give the American public access to information on how their tax dollars are being spent. In 2008, FFATA was amended by the Government Funding Transparency Act, Pub. L. 110-252, which required prime recipients to report details on their first-tier sub-recipients for awards made as of October 1, 2010.

The Digital Accountability and Transparency Act (DATA Act) Pub. L. 113-101, on May 9, 2014, which expanded FFATA by disclosing direct agency expenditures and linking Federal contract, loan, and grant spending information to Federal agency programs, established government-wide data standards for financial data, and simplified and streamlined reporting and reporting requirements.

The data for *USAspending.gov* comes from a variety of sources within the Federal government, including the Federal Procurement Data System Next Generation (FPDS-NG), which is the system of record for Federal procurement data, Federal Assistance Broker Submission system (FABS); FFATA Sub-Award Reporting System (FSRS); and the System for Award Management (SAM).

2.4.7 DO NOT PAY (DNP)

The DO NOT PAY (DNP) (<https://donotpay.treas.gov/>) was established to help Federal agencies seamlessly comply with the Improper Payments Elimination and Recovery Improvement Act of 2012 (IPERIA) by supporting their efforts to prevent and detect improper payments. In addition to persons/entities identified in SAM.gov, DNP uses data sources such as the Office of Foreign

Assets Control (OFAC) Sanctions List and the Death Master File (DMF) to assist in determining eligibility for Federal funds.

2.4.8 Federal Audit Clearinghouse (FAC)

The Federal Audit Clearinghouse (FAC) (<https://harvester.census.gov/facweb/>) operates on behalf of the Office of Management and Budget (OMB) to:

- Distribute single audit reporting packages to Federal agencies;
- Support OMB oversight and assessment of Federal award audit requirements;
- Maintain a public database of completed audits; and,
- Help auditors and auditees minimize the reporting burden of complying with the 2 CFR 200 Subpart F – Audit Requirements.

A recipient that expends \$750,000 or more in Federal awards during a recipient’s fiscal year must have a single or program-audit conducted for that year (**2 CFR § 200.501(a)**). The required components of the audit reporting package are found at **2 CFR § 200.512(c)**.

The package is submitted to the U.S. Census Bureau’s Federal Audit Clearinghouse (FAC) via <https://harvester.census.gov/facides/account/login.aspx>. In addition, the non-Federal entity and its auditor must prepare and submit a Data Collection Form (SF SAC) that summarizes the results of the audit to the Census Bureau’s Federal Audit Clearinghouse. The clearinghouse distributes the reporting packages to appropriate Federal awarding agencies, and captures the information from the SF SAC forms in an online, searchable database.

The SF SAC and the database provide five kinds of information:

- General information such as the fiscal and audit period, type of audit, employer identification number (EIN), Data Universal Numbering System (DUNS) number, and Federal cognizant or oversight agency;
- Auditee information, including address, phone number, contact name, and a certification of completeness and accuracy of the information provided on the SF SAC;
- Auditor information;
- Financial statement audit information, that indicates the type of financial statement and the results of the financial statement audit; and
- Federal program information.

This last set of data includes information about the Single Audit results, the Federal awards administered by the entity, and an identification of the Federal agencies required to receive audit reporting packages.

It should be noted that the database contains a limited amount of information excerpted from the complete reporting package. Therefore, if the OA/OST has questions about anything on the Data Collection Form, they should request a complete reporting package, and review the entire package before making any final decisions concerning an applicant.

2.5 English language

The OA/OST must produce and maintain all documents pertaining to awards in the English language. Applications must be submitted in the English language.

If a significant portion of the non-Federal entity's employees who are working on the award are not fluent in English, the recipient must provide the award information in both English and the language(s) with which employees are more familiar. The English language meaning will control if inconsistencies between the award and translated version are inconsistent (**2 CFR § 200.111**).

2.6 U.S. Currency

Applications and reports must be submitted in terms of U.S. dollars. If another currency is used for the application or report, the OA/OST will convert the foreign currency to U.S. currency using rates applicable on the date specified on the receipt of the application or report (**2 CFR § 200.111**).

2.7 Conflict of Interest

All non-Federal entities must disclose, in writing any potential or real conflicts of interest to the OA/OST or pass-through agency in accordance with **2 CFR § 200.112**.

The OA/OST is responsible for developing conflict of interest policies which address the following:

- conditions under which outside activities, relationships, or financial interests are proper or improper;
- mechanisms for advance notification of the activities above, and a process for reviewing and assessing the appropriateness of the activities;
- how conflicts of interest may be addressed; and,
- if an individual is applying for/receives a Federal research award, the OA/OST must make a case-by-case determination on the steps to be taken, to provide a reasonable expectation that the design, conduct, and reporting of the research will be free from bias resulting from a financial conflict of interest of the individual.

The OA/OST policy may require consultation with Counsel, when applicable.

When questions arise with respect to a potential conflict of interest involving reviewers of applications, or if there is doubt as to whether a conflict of interest exists, OA/OST personnel should consult with ethics counsel.

2.8 Mandatory Disclosures

An applicant and/or recipient of Federal awards must disclose, in a timely manner, in writing to the OA/OST or pass-through entity all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the OA/OST award (**2 CFR § 200.113**). To ensure compliance by the applicant/recipient, the OA/OST must include an Award Term and Condition that identifies the obligations of the applicant/recipient to provide such information to SAM.gov in a timely fashion (**Appendix XII to 2 CFR Part 200 – Award Term and Condition for Recipient Integrity and Performance Matters**). If the applicant/recipient fails to make the required disclosures, they may be subject to remedies for noncompliance (**2 CFR §**

200.338) including suspension and debarment (**2 CFR Part 180, 31 U.S.C. § 3321, and 41 U.S.C. § 2313.**)

Part III: Crosscutting Requirements for Federal Awards Programs and Recipients

A number of considerations for the effective and efficient use of Federal funds may be used in the administration of financial assistance. The use of these requirements may be statutorily-dictated, or restricted, but is subject to government-wide regulations.

3.1 Cost Sharing (Matching), and Maintenance of Effort

The OA/OST must include cost sharing (matching funds) and maintenance of effort requirements when required by statute.

3.1.1 Cost sharing or matching funds

Cost sharing, or matching, is the portion of project costs not paid with Federal funds (unless otherwise authorized by Federal statute), and is generally stated as a percentage (**2 CFR § 200.29**). Cost sharing requirements are identified in authorizing or appropriations language and can vary across the different programs. The guidelines for use of cost sharing or matching funds are found in **2 CFR § 200.306, and Subpart E – Cost Principles of 2 CFR Part 200**.

Criteria for considering voluntary committed cost sharing and any other program policy factors that may be used to determine who may receive a Federal award must be explicitly described in the notice of funding opportunity (**2 CFR § 200.306**).

Cost sharing or matching funds may be used only for authorized Federal award purposes.

If the OA/OST has the ability to use cost sharing or matching, two types of match may be considered:

- Cash match (hard) includes cash spent for project-related costs. An allowable cash match must include costs which are allowable with Federal funds, except acquisition of land, when applicable.
- In-kind match (soft) includes, but is not limited to, the valuation of non-cash contributions. “In-kind” may be in the form of services, supplies, real property, and equipment (**2 CFR § 200.306(b) and (d)**).

3.1.1.1 Sources of Cost Sharing or Matching Funds

The source of matching or cost-sharing contributions may be:

- A non-Federal source, (e.g., state or local government, private non-profit foundation, private individual);
- Program income, with prior approval of the OA/OST;
- Federal funds awarded under other Federal awards or contracts, only if authorized by statute; and/or,
- Unrecovered indirect costs.

Matching or cost-sharing requirements are not allowable from the following sources:

- Costs paid by another Federal award or subaward unless the authorizing statute permits those costs to be used as matching or cost sharing. However, this limitation does not apply to fee or profit earned by a recipient or subrecipient from a contract awarded under another Federal award or other type of assistance award.
- Costs or contributions used to satisfy a matching or cost-sharing requirement on another Federal award or procurement contract.
- Costs or contributions of services or property financed by program income earned by contractors under a contract from the recipient or a subrecipient (apart from any fee or profit the contractor earns because of the contract), unless expressly authorized by the Award Agreement.
- Reallocated existing agency, state, or local funds unless otherwise specified by statute.

3.1.1.2 Enforcement of Cost Sharing or Matching Funds

A recipient must provide the required matching or cost sharing by the end of the applicable period of performance or per the terms of the award agreement. If a recipient fails to provide some or all the required matching or cost sharing, the OA/ OST may:

- At pre-award: reduce the Federal award amount;
- During the period of performance: make a downward adjustment of grant funds;
- Post-award: disallow costs; or
- Use any other form, or combination, of remedial actions provided in **Section 5.5** of this Guide.

3.1.2 Maintenance of Effort

A maintenance of effort (MOE) is a statutory requirement for a recipient to maintain expenditures of non-Federal amounts for such activities at a level that is not less than the level of such expenditures maintained by the entity before the award. The OA/OST will follow the appropriate statutory authority which established the MOE requirements for its program.

3.2 Pre-Award Costs

In general, all costs incurred before the OA/OST makes the award are at the recipient's risk. The OA/OST is under no obligation to reimburse such costs if for any reason the recipient does not receive a Federal award or if the Federal award is less than anticipated and inadequate to cover such costs. However, the OA/OST may approve the costs with written approval where such costs are necessary for efficient and timely performance of the scope of work and such costs would be allowable if incurred after the date of the Federal award (**2 CFR § 200.458, 2 CFR § 200.407**).

3.3 Program Income

Program income is the gross income earned by the recipient that is directly generated by a supported activity or earned as a result of the award during the period of performance (**2 CFR § 200.80, § 200.307 and § 200.407; 2 CFR § 1201.80**). Program income includes, but is not limited to,

- income from fees for services performed,
- the use or rental of real or personal property acquired under Federal awards,
- the sale of commodities or items fabricated under a Federal award,
- license fees and royalties on patents and copyrights, and
- interest on loans made with Federal award funds.

Interest earned on advances of DOT funds is not program income. Any interest earned by recipient up to \$500 per year may be retained by the recipient for administrative purposes and any additional amounts remitted in accordance with **2 CFR § 200.305(b)(9)**.

Unless provided for in statute, regulation, or terms and conditions of the award, program income does not include:

- rebates,
- credits,
- discounts,
- taxes,
- special assessments,
- levies, and fines raised by a recipient and sub-recipient, and
- interest earned on any of them.

Unless otherwise specified in the terms and conditions of the award, the allowable use of program income is listed in **2 CFR § 200.307 and § 200.407** (prior written approval).

3.4 Purchase and Care of Real Property, Equipment and Supplies

Property represents a resource to the recipient that not only enables that recipient to meet the objectives of the Federal award but which, in most cases, will remain with the recipient for authorized purposes after the Federal award's completion. The recipient is responsible for the day-to-day management of real property, equipment and supplies acquired or used under a Federal award.

Recipients must maintain written policies and procedures that address acquisition, classification, and management of all equipment and supplies, whether associated with Federal awards or other recipient activities.

The OA/OST must assess the adequacy of those policies and procedures before award and during performance. The recipient's management system for equipment must meet the requirements of **2 CFR § 200.313(d)**.

In dealing with real property, equipment and supplies, the OA/OST should review the following sections of 2 CFR Part 200:

- §200.310 – Insurance Coverage
- §200.311 – Real Property
- §200.312 – Federally-owned and exempt property
- §200.313 – Equipment
- §200.314 – Supplies
- §200.316 – Property trust relationship

- §200.329 – Reporting on real property
- §200.436 – Depreciation
- §200.439 – Equipment and other capital expenditures
- §200.453 – Materials and supplies costs, including costs of computing devices
- §200.465 – Rental costs of real property and equipment

While acquisition and maintenance of equipment, generally, is an allowable cost, acquisition of real property is unallowable in the absence of specific statutory authority.

Categorization of the property depends on the determination of whether the unit is intended to be used as equipment or to be affixed to the land in such a way that it becomes a permanent structure. Equipment intended to be “fixed” rather than “movable,” must be classified as real property.

3.4.1 Title to and use of equipment and supplies

Prior to issuing an award that involves purchasing equipment and supplies, the OA/OST under a Federal award offers limited transparency; therefore, prior to issuing an award the OA/OST must:

- adequately review the proposed budget for:
 - proper classification and allowability of proposed equipment and supply costs;
 - consistency with program goals and objectives; and,
 - the need for the proposed equipment and supplies in order to carry out the grant-supported project;
- ensure that an applicant/recipient has adequate property management, procurement management, and financial management systems;
- identify potential issues related to equipment or supplies, such as generation of program income; and,
- when warranted by audit findings or other known issues related to property, consider special award conditions to ensure accountability.

Under a research grant to a non-profit institution of higher education or to a non-profit organization whose principal purpose is conducting scientific research, the OA/OST must use the special authority provided in the Federal Grant and Cooperative Agreement Act (**31 U.S.C. § 6306**) to vest title to equipment and supplies to the recipient without further accountability (except for those obligations in **2 CFR § 200.313**), thus making it “exempt Federally-owned property,” unless the recipient is subject to specific award conditions.

3.4.2 Award terms and conditions for equipment and supplies

The OA/OST’s and recipient’s rights and responsibilities related to acquisition, use, management, and accountability for equipment and supplies must be clearly spelled out in the terms and conditions of the award. This includes requirements for prior approval for rebudgeting into the equipment category or review of the proposed procurement to acquire the equipment (consistent with **2 CFR § 200.318**) and, as applicable:

- the requirement for periodic tangible personal property reports using the SF 428, Tangible Personal Property Report or other Office of Management and Budget (OMB) approved information collection tool;
- property management requirements related to specific award conditions;
- generation of program income as a result of using property acquired under a Federal award;
- whether equipment will be considered exempt; and,
- any requirement for a recipient to maintain insurance beyond what it normally maintains for its own operations as an allowable direct cost (any limitations on self-insurance and the need to demonstrate the cost-effectiveness of the insurance obtained must be specified).

The terms and conditions related to equipment must also:

- ensure that Federal interests in the property during and after the project period are adequately protected;
- be appropriate for the recipient both as a type of entity, for example, a state, and in relation to the specific capabilities of the organization to manage property;
- be consistent with the purpose of the project or program; and,
- have a benefit consistent with the cost of administration both by the recipient and the OA/OST.

Unless the recipient is designated as an excluded party, or statutory or programmatic requirements apply, the OA/OST may not impose additional management or disposition requirements. An excluded party designation will allow the OA/OST to place more restrictive conditions on awards, but property classification cannot be changed on the basis of that designation.

3.4.3 Recipient-acquired equipment or supplies

The following circumstances regulate when an OA/OST can place limitations or controls on recipient acquisition or management of equipment or supplies acquired under a Federal award:

- the limitation is authorized by **2 CFR §§ 200.313-314, and § 200.439**;
- the program’s authorizing legislation or implementing regulations include limitations or controls; or,
- concerns have been identified during the administrative and/or merit review of the proposal (**See Section 4.5**).

3.5 Subawards and Contracts under Federal Awards

The OA/OST has no direct relationship with a subrecipient or contractor under a Federal award. Management of subawards and contracts is the responsibility of the recipient.

If the recipient makes subawards or awards contracts under a Federal award, the recipient named on the award agreement is the entity legally accountable to the OA/OST for performance of the project or program, the appropriate expenditure of funds by all parties, and other requirements placed on the recipient. In the event of non-compliance by a subrecipient or contractor with an

applicable requirement, the OA/OST will turn to the recipient for any repayment or other required action.

Unless prohibited by statute, regulation or program guidance, a recipient may authorize Federal funds to another non-Federal entity to provide support for the performance of any portion of the project or program.

The OA/OST must not:

- participate or influence the selection of subrecipients or contractors under Federal awards;
- specify a particular entity to receive a subaward or contract under a Federal award;
- direct a recipient to award procurement contracts or subawards to particular organizations;
- suggest the use of specific contractors or subrecipients;
- use recipient subawards or recipient acquisitions to circumvent Federal award competition policies; or,
- interfere with the recipient's selection decisions or use language in communications with applicants or recipients that implies OA/OST approval of a subrecipient or contractor because an OA/OST is not a party to the subaward or contract.

The OA/OST may review the recipient's process for selecting subrecipients or contractors to ensure compliance with federal requirements, provided this specification is included in either the NOFO or added as special conditions to the award.

The OA/OST must avoid the appearance of endorsement or use language that could create potential liability for the Federal agency.

3.5.1 Transfer of substantive programmatic activity

Recipients intending to transfer performance of any portion of the substantive programmatic work under a Federal award must indicate this information to the extent known at the time of the application.

Prior approval by the OA/OST is required for the transfer of substantive programmatic work from a recipient to a subaward or contract once the period of performance has commenced (**2 CFR § 200.407(d), and § 200.308(c)(1)(vi)**) to ensure that:

- the proposed arrangement(s) is consistent with applicable statutory authorities;
- the recipient maintains an appropriate role in the project or program, i.e. the recipient maintains a substantive role in the project/program consistent with the approved application;
- the proposed arrangement(s) is required for the efficient and effective accomplishment of Federal award objectives; and,
- it is appropriate for the work to be transferred under the Federal award, e.g., whether it is a subaward or a procurement of routine goods or services.

The OA/OST must ensure that the recipient is not serving as a conduit for passing funds to other parties and, as applicable, any limitations related to the amount of pass-through are observed.

The OA/OST must specify in the NOFO the type and level of detail concerning subawards that is necessary to allow the OA/OST to understand:

- who would be carrying out the Federal award-supported activity;
- the role of the recipient;
- the magnitude of funds to be transferred;
- the recipient's ability to monitor subrecipients; and,
- the effect on the project or program accomplishment if subrecipients do not perform satisfactorily.

Recipients must report each subaward obligation of \$25,000 or more in Federal funds in USASpending.gov as specified in [Section 2.4.6](#).

3.5.2 Making determinations between subawards and contracts

Federal funds may be issued by the recipient either through a subaward or a contract. These two distinct relationships are defined in [2 CFR § 200.330](#). Unless otherwise specified in statute or regulation, all types of organizations are eligible for subawards or contracts under Federal awards.

Recipients must use judgment in making a determination between a subaward and contract. In general, under a subaward, the subrecipient receives Federal funds to conduct a specific scope of work in conjunction with the project. A contract is legal instrument for the procurement of a product or service in which the recipient is paying for goods or services. [2 CFR § 200.330](#) provides guidance in making a determination between a subaward and contract.

In determining whether an agreement between a pass-through entity and another non-Federal entity casts the latter as a subrecipient or a contractor, the substance of the relationship should be closely reviewed. All of the characteristics listed in [2 CFR § 200.330](#) may not be present in all cases, and the pass-through entity must use judgment in classifying each agreement as a subaward or a contract.

3.5.3 Procurement of routine goods and services

Recipients may charge routine goods and services necessary for the performance of the Federal award, to either direct or indirect costs. However, the type of recipient may determine the procedure and the assignment of activities. The following regulations apply to the recipient type:

3.5.3.1 States

When procuring goods or services, States must follow the same policies and procedures they use for procurements using non-Federal funds ([2 CFR § 200.317](#)). In addition, States must ensure that every contract or other acquisition vehicle includes applicable clauses required by Federal statutes and executive orders and their implementing regulations, including the contract provisions contained in [Appendix II of 2 CFR Part 200](#).

3.5.3.2 Local governments, Indian tribal governments, Institutions of higher education, hospitals, non-and for-profit organizations

Recipients may use their own procurement procedures that reflect applicable state and local laws and regulations, provided that the procurements conform to applicable Federal statutes and the standards identified in **2 CFR §§ 200.318-326**.

3.5.3.3 Federal institutions

Federal institutions must follow the Federal Acquisition Regulation.

3.5.3.4 Foreign organizations

Given the differences in foreign organization types and any applicable governing requirements of foreign countries, the OA/OST may require its review of all proposed procurements exceeding a certain dollar amount or for certain types of services and/or may add specific terms and conditions to its awards that address the procurement of such goods and services.

3.5.4 Eligibility of organizations for subawards or contracts

Contracts under Federal awards must be advertised, evaluated, and awarded consistent with the requirements of the recipient's procurement system and applicable statutes and regulations of the jurisdiction in which the recipient conducts business.

A recipient may not make a subaward to an organization unless the organization has obtained a Dun and Bradstreet Universal Numbering System (DUNS) number.

The recipient must follow the guidelines in **2 CFR § 180.300** as follows to ensure that it does not make a subaward or award a contract to an entity that is debarred, suspended, or ineligible:

- for all first-tier subawards regardless of potential value and require first tier-subrecipients and lower-tier subrecipients to similarly check SAM.gov; and,
- for all first-tier procurement contracts with a value of \$25,000 or more and all lower tiers of subcontracts under covered non-procurement transactions (**2 CFR § 180.220**).

3.5.5 Flow through or flow down requirements

Requirements that are specified in a recipient's Award Agreement do not automatically apply to subrecipients or contractors. The OA/OST monitoring must address the recipient's compliance with appropriate and applicable requirements (**See 2 CFR §§ 200.101(b)(1) and 200.331**).

The Federal awards regulations (**2 CFR Part 200 Subpart E**) must be used as the basis for determining allowable costs under subawards and cost-reimbursement contracts. They are not required to be applied to contractors under fixed-price type contracts. (**See 2 CFR § 200.101(b) and 2 CFR Part 1201**).

3.6 Indirect Costs

Costs on a Federal award are classified either as direct or indirect costs. Costs must be treated consistently across the program as either direct or indirect costs in order to avoid double charging Federal award funds.

Direct costs are those costs that can be identified to a particular final cost objective within the Federal award or that can be directly assigned to such activities relatively easily with a high degree of accuracy **(2 CFR § 200.413(a))**.

Indirect costs are those costs incurred for a common or joint purpose **(2 CFR § 200.56)**. Identification with a Federal award rather than the nature of the good and services involved is the determining factor in distinguishing direct from indirect costs of Federal awards

If indirect costs are not permitted, or are limited, the Notice of Funding Opportunity (NOFO) must state this **(See 2 CFR §200.414)**. If this applies to an entire program, not just an opportunity, the OA/OST should indicate this in the Assistance Listing.

3.6.1 Federally negotiated indirect cost rates and provisions

If applicable to the award, the OA/OST must accept a recipient's Federally negotiated indirect cost rate agreement **(2 CFR § 200.414)** unless:

- A Federal statute or regulation authorizes a different rate;
- A deviation was approved by the Office of General Counsel for either a class of awards, or an individual program, and the deviation has been reported to the Office of Management and Budget **(2 CFR § 200.414(c)(2))**.

If the OA/OST is using a rate other than a negotiated indirect cost rate for a program or class of awards, the rate and circumstances must be noted in the NOFO.

Additionally, the OA/OST may apply the following provisions for treatment of indirect costs:

- a recipient (other than a governmental department or agency unit that receives more than \$35 million in direct Federal funding **(Appendix VII to 2 CFR Part 200)**) can elect to accept a 10 percent de minimis indirect cost rate of modified total direct costs (MTDC) if a negotiated cost rate has never been established **(2 CFR § 200.414(f))**;
- a pass-through entity must recognize a subrecipient's indirect cost rate agreement. If there is none, the pass-through entity may negotiate a rate with the subrecipient, or provide a 10 percent de minimis indirect cost rate **(2 CFR § 200.331(a)(4))**; and,
- a recipient with a current negotiated indirect cost rate may apply for a one-time extension of the rates for a period up to four year **(2 CFR § 200.414(g))**.

3.6.2 Indirect cost rate proposals and cognizant agency

The agency that provides the most Federal dollars to a recipient is considered its cognizant agency, and the recipient will submit an indirect cost proposal to its cognizant agency. For review and approval of the proposal, the OA/OST will use its own procedures.

Guidelines for the development of indirect cost rate proposals, and cost allocation plans, are found in **Appendices III through VII of 2 CFR Part 200**.

3.6.3 Application of indirect cost rates and adjustments in amounts claimed

For institutions of higher education (IHEs) **(Appendix III of 2 CFR Part 200)**, the OA/OST will apply the negotiated rate(s) in effect at the beginning of a period of performance to determine facilities and administrative (F&A) costs for the entire period of performance. If the rate

agreement(s) in effect at the beginning of the period does not cover the entire period of performance, then the rate in effect for the last year of the negotiated rate agreement will be used to determine indirect costs for the duration of the period of performance. IHEs may not rebudget from direct costs to accommodate a rate increase if the F&A costs provided for a period were based on negotiated (fixed or predetermined) rates rather than provisional rates (defined as not “negotiated” for the application of Appendix III). If negotiated rate agreements do not extend through the life of the Federal award at the time of the initial award, then the negotiated rate for the last year of the Federal award must be extended through the end of the life of the Federal award.

For all other recipients, the OA/OST will apply the negotiated rate in effect at the beginning of each budget period as the basis in determining indirect costs for that budget period. However, if the rate in effect at the beginning of the budget period was provisional and is superseded by a final rate, whether higher or lower, the latter rate will be used to determine indirect cost reimbursement, excluding, as applicable, any unallowable costs.

The OA/OST may, but is not obligated to, amend an award to provide additional funding for indirect costs under the following circumstances:

- the OA/OST made an error in computing the award;
- the OA/OST restores funds previously recaptured as part of a recipient’s unobligated balance; and,
- the recipient is eligible for additional indirect costs associated with additional direct costs awarded, e.g., funds awarded as a supplement.

3.6.4 Use of the de Minimis Rate

If the applicant has never received a negotiated indirect cost rate and the applicant is not a State or local governmental department or agency unit that receives more than \$35 million in direct Federal funding (**Appendix VII to Part 200 § D.1.b**), the OA/OST and applicant may elect to use a de minimis rate of 10% of MTDC, which may be used indefinitely (**2 CFR § 200.414(f)**). However, if the de minimis rate is not satisfactory, and the applicant chooses to negotiate the rate, they should be instructed to refer to the following appendices in 2 CFR 200:

- **Appendix III to Part 200 – Indirect (F&A) Cost Identification and Assignment, and Rate Determination for Institutions of Higher Education (IHEs);**
- **Appendix IV to Part 200 – Indirect (F&A) Cost Identification and Assignment, and Rate Determination for Nonprofit Organizations; and**
- **Appendix VII to Part 200 – States and Local Government and Indian Tribe Indirect Cost Proposals.**

3.7 Payment

The OA/OST will permit payments to recipients in accordance with the regulations stated in **2 CFR § 200.305**.

Within DOT, non-Federal entities request payment of the Federal share of allowable costs from the appropriate financial office within each OA/OST. The OA/OST may either make an advance

payment or a reimbursement payment to the recipient, based upon the stated terms and conditions of the Federal award.

Each OA/OST must review requests for payments. In approving the request for payment, the following should be considered in addition to **Subpart E of 2 CFR 200**:

- The amount requested is reasonable considering the effort expended and/or progress attained by the non-Federal entity in fulfilling the Federal award statement of work;
- The non-Federal entity's compliance with the financial and program progress reporting requirements of the Federal award;
- If the Federal funds requested are reasonable in relationship to the matching share requirements; and
- For any costs that require further clarification, supporting documentation from the non-Federal entity's records under **2 CFR § 200.336**.

The OA/OST should reject payment if:

- The recipient is not in compliance with appropriate terms and conditions;
- The amount requested is unreasonable in relationship to the work performed and estimated costs incurred; or
- Any of the other factors set forth above requires rejection.

3.8 Public Access to the Results of Federally-Funded Scientific Research

The OA/OST will develop policies and procedures to implement the Department's "Plan to Increase Public Access to the Results of Federally-Funded Scientific Research" (<https://www.transportation.gov/mission/open/official-dot-public-access-plan-v11>).

For research awards, the OA/OST will incorporate the public access requirements in the terms and conditions of the award, either by text or reference. In the applicable research award NOFOs, the OA/OST should include language, or incorporate by reference, the respective public access language in the Federal Award Information - Reporting Requirements (**2 CFR Part 200, Appendix I, Section F.3**).

3.9 Technology Transfer for Federally-Funded Research & Development

The OA/OST will develop policies and procedures to implement the "Department of Transportation Technology Transfer Plan 2012" (*currently under revision*)" (<https://transportation.gov/research-and-technology/technology-transfer>).

For research awards, the OA/OST will incorporate the technology transfer requirements in the terms and conditions of the award, either by text or reference. In the applicable research award NOFOs, the OA/OST will include, or incorporate by reference, the respective technology transfer language in the Federal Award information – Reporting Requirements (**2 CFR 200, Appendix I, Section F.2**).

Part IV: Pre - Federal Award Program and Award Administration

Prior to issuing a NOFO, the OA/OST must establish a plan concerning the evaluation of proposals and selection of the federal awards under the program. This is commonly referred to as the “Evaluation Plan”. In general, these details should include:

- Statutory, legislative, or appropriations language dictating the conditions of the award;
- Type of assistance (the award instrument);
- Competition and any restrictions to full and open competition;
- Intergovernmental Review instructions, if applicable; and
- The criteria and process for the administrative and merit review of the proposals.

This entire plan, or required portions, will become part of the NOFO (**2 CFR 200, Appendix I, E.2**). Details of the evaluation process that do not alter the applicant’s ability to make informed decisions when preparing applications and do not materially affect the fairness of the process do not need to be developed before the NOFO is issued.

4.1 Determining the Appropriate Award Instrument

An assistance agreement is the legal instrument used to reflect a relationship between the Federal government and a non-Federal entity when the principal purpose is the transfer of money, property, or anything of value to the other party to the agreement to assist in accomplishing a public purpose of support or stimulation authorized by Federal law (**31 U.S.C. §§ 6304-6305**).

Assistance agreements vary depending upon:

- Legislative or statutory authority: Federal agencies must be authorized by statute to stimulate or support an activity. This statutory authority from Congress must exist either in broad legislation, including appropriation language, or in a program-specific statute. Without statutory or legislative authority, the OA/OST may not use an assistance agreement.
- Principal purpose: If the predominant purpose of a project is to support or stimulate a public purpose, an assistance agreement is appropriate when there is also statutory authority for the OA/OST to provide that support or stimulation.
- Degree of involvement by the Federal Agency: The issue of “substantial involvement” is the basis for the distinction between a grant and a cooperative agreement. If substantial involvement by the Federal Government is anticipated, a cooperative agreement is to be used. For a grant, the recipient is expected to complete the project without substantial agency involvement
- Unless otherwise stated in statutory or legislative authority, or appropriations language, all financial assistance awards follow the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards at **2 CFR Part 200** and **2 CFR Part 1201**.

4.2 Type of Award

There are a number of types of awards, and the OA/OST should select the appropriate instrument that satisfies:

- Any statutory or regulatory specifications;
- The beneficiary of the results of the award; and,
- The amount of involvement by Federal personnel.

The selection of an incorrect instrument may result in needless monitoring or an inability to meet the mission of the program.

4.2.1 Procurement Contracts

Procurement contracts are not financial assistance awards. Procurement contracts are administered under Title 48 Federal Acquisition Regulations System (FAR), or the Acquisition Management System (AMS) for FAA. OAs/OST should use a procurement contract when:

- The principal purpose of the instrument is to acquire (by purchase, lease, or barter) property or services for the direct benefit or use of the United States Government; or
- In a specific instance where the use of a type of procurement contract is appropriate. If DOT provides specifications for the project, is having the project completed based on its own identified needs, or will directly use the report or results of the project to support its mission objectives, then, in most cases, the principal purpose is to acquire property or services for the direct benefit or use of DOT and the award instrument should be a contract.

If an OA/OST awards a cost-reimbursement contract under the FAR to a non-Federal entity, the sections of 2 CFR Part 200 that apply are stated in **2 CFR § 200.101(b)(2)**.

It is possible for non-Federal entities to create procurement contracts under an award, and in doing so they must follow **2 CFR Part 200 Subpart D – Procurement Standards, 2 CFR § 1201.317** and **2 CFR § 200.401**.

4.2.2 Non-discretionary and Formula Agreements

A non-discretionary grant (or cooperative agreement) is awarded under a program where the authorizing statute requires the head of the agency or designee to make an award to each eligible entity under the conditions and in the amount (or based on the formula) specified in the statute.

Formula grant agreements and cooperative agreements are noncompetitive awards based on a predetermined formula. Allocations of Federal funding to states, territories, or local units of government are determined by distribution formulas in the authorizing legislation and regulations. To receive a formula grant, the entity must meet all the eligibility criteria for the program, which are pre-determined and not open to discretionary funding decisions. Formula grants typically fund activities of a continuing nature and may or may not be confined to a specific project. Common elements in formulas include population, proportion of population below the poverty line, and other demographic information. The formula has been set by legislation and regulations, so funds must be awarded per formula. Unlike discretionary Federal awards, formula grants are not required to be announced via NOFO, as funding recipients are already pre-defined via authorizing legislation, based on established eligibility requirements.

4.2.3 Grants and Cooperative Agreements

4.2.3.1 Discretionary Awards

DOT awards discretionary funds based on a competitive process unless provided for in section 4.3. Applications are reviewed through a formal process, in compliance with the legislative and regulatory requirements and published selection criteria established for a program. The review process gives DOT the discretion to determine which applications best address program requirements and are most worthy of funding.

4.2.3.2 Fixed amount award

A fixed amount award is a grant or cooperative agreement under which the OA/OST or pass-through agency provides a specific level of support without regard to actual costs incurred under the award. It is designed to reduce the administrative burden and record-keeping requirements for both the recipient and the OA/Ost or pass-through agency. Accountability is based on performance and results (**2 CFR § 200.45, 2 CFR § 200.201(b)**).

Fixed amount awards cannot be used in programs with a mandatory cost share or match (**2 CFR § 200.201(b)(2)**).

4.2.3.3 Cooperative Agreements

A cooperative agreement is a grant or contract that contains “substantial involvement” on the part of the Federal government (**31 U.S.C. §§ 6302-6305**):

- Substantial involvement during performance does not include:
 - agency approval of recipient plans prior to award;
 - normal exercise of Federal stewardship responsibilities during the period of performance, such as site visits, performance reporting, financial reporting, and audit to ensure that the objectives, performance goals, terms, and conditions of the award are accomplished;
 - unanticipated agency involvement to correct deficiencies in project or financial performance from the terms of the assistance instrument;
 - general statutory requirements understood in advance of the award, such as civil rights, environmental protection, and provision for persons with disabilities;
 - agency review of performance after completion; and/or,
 - general administrative requirements.
- Substantial involvement may include, but is not limited to the following:
 - agency power to immediately halt an activity if detailed performance specifications (e.g. construction specifications) are not met. These would-be provisions that go beyond the suspension remedies of the Federal government for nonperformance;
 - agency review and approval of one stage before work can begin on a subsequent stage during the period covered by the assistance instrument;
 - agency review and approval of substantive provisions of proposed subawards or contracts. These would-be provisions that go beyond existing policies of Federal review of recipient procurement standards and sole source procurement;

- agency involvement in the selection of key relevant personnel (This does not include assistance provisions for the participation of a named principal investigator for research projects.);
- agency and recipient collaboration or joint participation;
- agency monitoring to permit specified kinds of direction or redirection of the work because of interrelationships with other projects;
- substantial, direct agency operational involvement and participation during the assisted activity is anticipated prior to award to ensure compliance with such statutory requirements as civil rights, environmental protection, and provision for persons with disabilities. This would exceed the normally anticipated general statutory requirements; and/or,
- highly prescriptive agency requirements prior to award limiting recipient discretion with respect to scope of services offered, organizational structure, staffing, mode of operation, and other management processes, coupled with close agency monitoring or operational involvement during performance over and above the normal exercise of Federal stewardship responsibilities to ensure compliance with these requirements.

(Implementation of Federal Grant and Cooperative Agreement Act of 1977, Final Office of Management and Budget (OMB) Guidance, August 18, 1978, 43 FR 36,860)

4.2.4 Other Transaction Agreements (“OTA”)

Other Transaction Agreements are alternative instruments that may include financial assistance awards. OTAs are specifically authorized by Congress, and are not bound by all the same regulations normally followed by Federal awards. OTAs may be used as a procurement contract or a discretionary federal award and are subject to the respective administrative requirements. This guide only applies to OTAs in the form of a grant or cooperative agreement.

The term “Other financial assistance” (**2 CFR §200.40(a)(6)**) is considered as an “Other Transaction” for Department program purposes. Each OA and OST utilizing “Other Transaction” authority is required to:

- Develop [or update] program-specific internal policies to ensure adequate management of OTAs, including:
 - Document justification for selection of an “other transaction” agreement.
 - Document justification when competition is not the basis for selection of the award.
 - Include provisions which provide for sufficient government program oversight to ensure proper expenditure of public funds.
 - Consult legal counsel to ensure agreements are clear and complete.
- Designate an agreements officer or other accountable official who has authority to approve other transaction agreements and associated funding, and to act as the focal point for amendments or modifications to the agreements.
- Report awards using Other Transaction Authority under USAspending.gov, coded as “Other” type of instrument.
- Identify and monitor proper internal controls.

In the absence of any legislative instructions for the development of program-specific guidelines and internal controls, the OA/OST should refer to the appropriate sections of **2 CFR Part 200** for accountability, performance and reporting, or the **Standards for Internal Control in the**

Federal Government, (aka the "Green Book"), for guidelines. At a minimum, all guidance needs to be well-documented, ensure transparency and stewardship in the administration of the award, and be publicly available.

4.3 Maximizing Competition and Authorized Exceptions to Competition

Maximum competition is encouraged for all discretionary Federal awards (**31 U.S.C. § 6301(3)**).

As a policy, competition is not required when sole source is statutorily authorized, or meets one of the following criteria, which are based on the criteria for procurement described at **10 U.S.C. § 2304(c)(3)** and **41 U.S.C. § 3304(a)(2)**:

- An unsolicited proposal that contains a unique or innovative idea, method, or approach that is not the subject of a current or planned assistance award;
- A continuation of a presently funded activity, for which competition would adversely affect the continuation or completion of the activity;
- A presidential declaration of disaster or emergency;
- The legislative intent evidenced by the legislative language or legislative history, that directs the award to be a specific recipient or specifies objectives obtainable by only one recipient;
- A unique capability of expertise; or
- The amount available for award is not large enough to generate sufficient competition.

If the OA/OST is not using maximum competition, a justification for reduced eligibility will need to be included in the NOFO, if applicable (**2 CFR § 200.203(c)(3)**). The OA/OST is required to create a Justification for Other-Than-Full-And-Open-Competition (JOTFOC) which includes the basis for not competing the award and a rationale for selecting the recipient(s).

4.3.1 Requirements of the Justification for Other-Than-Full-And-Open-Competition (JOTFOC)

Congressionally directed awards to a single source may be documented via a memorandum to the file indicating the source of congressional direction.

In other instances, when an award is made without competition, a “justification for other-than-full-and-open competition” (JOTFOC) must be prepared and submitted with the request for financial assistance. The JOTFOC must include:

- An explanation of why competition was not practicable.
- The criteria listed (in the previous section) that justifies the non-competitive (sole source) award along with explanations.
- The program legislation (authority for the award).
- The relevant legal history.
- The capabilities of the proposed recipient.
- The cost sharing offered by the recipient, if applicable (**2 CFR § 200.306(a)**).

The JOTFOC must be internally approved by at least an OST Office Director, OA Regional Director, or other comparable level and must be retained in the program/grant files. This authority cannot be may be redelegated to a lower level.

4.4 Intergovernmental Review

Executive Order 12372, "Intergovernmental Review of Federal Programs," was issued 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. The Executive Order is implemented in **DOT Order 4600.13**. The OA/OST issuing the NOFO or program announcement should determine if a review is required. The NOFO or program announcement must specify whether a review is or is not required (**Appendix I to 2 CFR Part 200; 49 CFR Part 17**). The OA/OST is responsible for annually updating their information in the Assistance Listings (formerly CFDA) regarding their compliance with this Executive Order. The list of programs requiring review is found in Appendix I of the Annual CFDA Catalog (print version). **Appendix C** lists the programs requiring review as of October 1, 2018.

Not all States participate in the Intergovernmental Review, but for those states that do, applicants should be made aware that they will need to comply with their states' process. Every State is permitted to designate a State Single Point of Contact (SPOC) to liaise between the state process and all Federal agencies to foster intergovernmental partnership and strengthen federalism by relying on state and local processes for the coordination and review of proposed Federal financial assistance. If the OA/OST does not accept the recommendations of a SPOC under EO 12372, the OA/OST must notify the SPOC as specified in **49 CFR § 17.10**. The current list of Single Point of Contact (SPOC) are listed in the Office of Management and Budget's Web site. <https://www.whitehouse.gov/omb/management/office-federal-financial-management/>.

4.5 The Administrative and Merit Review of Proposals

The review of proposals consists to two general areas: administrative and merit. Together, these reviews identify those applicants and proposals best suited to receive a Federal award. The reviews may be accomplished concurrently, or subsequently, and review criteria may not be exclusive to each. Both reviews should be completed in a timely fashion after the closing deadline of the award, and consistent with schedule information provided in the NOFO.

The administrative review is an evaluation of the applicant. This review focuses on the applicant's eligibility to receive a Federal award, and an assessment of their potential success in completing the award from an administrative standpoint, including a risk assessment of the applicant's systems and abilities. The criteria for the administrative review is consistent for most grant programs, although specific program requirements may necessitate additional or alternative elements. Certain elements of the administrative review must be included in the NOFO, but the processes for this review may not be required.

The merit review is an objective evaluation of the proposal for scientific or technical aspects, and an assessment of the applicant's ability to complete the stated activities in the proposal. Merit review means a thorough, consistent, and objective examination of applications based on pre-established criteria by persons independent of those submitting the applications and knowledgeable in the field of endeavor for which support is requested.

For competitive grants or cooperative agreements, unless prohibited by Federal statute, the OA/OST must design and execute a merit review process for applications (**2 CFR § 200.204**). The merit review process is included in the evaluation plan, which should be prepared prior to

the development of the NOFO (**2CFR § 200.203(c)(5)**). This process and the criteria for the merit review must be described or incorporated by reference in the NOFO (**Appendix I to 2 CFR Part 200 – Full Text of Notice of Funding Opportunity**). The OA/OST should develop the merit review process based upon the current competition at hand, and ensure that all applications submitted to the merit review process are treated equitably and fairly. Some post-award requests for funding that result in a change of scope may also be subject to additional objective review.

Competing Federal award applications must undergo this objective review.

Prior planning of the merit review process should account for unexpected changes to the number and types of applications. If changes to the evaluation process identified in the NOFO alter the applicant's ability to make informed decisions when preparing applications and that alteration could materially affect the fairness of the process, then the OA/OST must provide that information to the applicant to permit changes to be made before the NOFO deadline. If the changes occur after the NOFO deadline, the OA/OST must inform the applicant and provide adequate time for the applicant to make the requisite changes.

4.5.1 The Administrative Review

The administrative review focuses on criteria unique to the applicant, and less on the proposal itself. Elements of the proposal which may be considered in the administrative review consist of whether the:

- Applicant is eligible for an award;
- Risk assessment of the applicant and their applicable systems determines they can meet the requirements of the NOFO and be successful in accomplishing the award; and
- Information/documents required by the NOFO have been submitted by the deadline.

When selecting award candidates, the OA/OST may make awards only to potential recipients that are “presently responsible,” possessing the ability to perform successfully under the terms and conditions of their Federal awards. Present responsibility includes an adequate performance record, a record of integrity and business ethics, and qualification and eligibility under applicable laws and regulations.

4.5.1.1. Applicant Eligibility

In addition to any eligibility criteria stated in the NOFO, the OA/OST must check for the following:

4.5.1.1.1. Registration in SAM.gov

The OA/OST must conduct a search of SAM.gov to ensure that all applicants have an active registration (**Section 2.4.2.1**) prior to submission of an application for a Federal award (**Appendix I of 2 CFR 200 § D.3**). In addition to providing a verification of the applicant and their particulars, an active registration indicates that the applicant has agreed to the government-wide public and national policy requirements (**Section 2.1.5**).

4.5.1.1.2 Suspension and Debarment

The OA/OST must check all applicants against the Federal-wide exclusions website managed in SAM.gov (**DOT Order 4200.5G**). The OA/OST agency must comply with the guidelines on government-wide suspension and debarment in **2 CFR Part 180** and must require non-Federal entities to comply with these provisions (**2 CFR § 200.205(d)**). These provisions restrict Federal awards, subawards, and contracts with certain parties that are debarred, suspended or otherwise excluded from or ineligible for participation in Federal programs or activities. SAM.gov contains the names of all entities and individuals suspended or debarred from receiving Federal funds. The OA/OST must search both the applicant (organization) and all key personnel listed in the application. The contents of the search should be maintained in the applicant's file.

4.5.1.1.3 Federal Tax Lien Delinquency and Felony Criminal Conviction

Similar to suspension and debarment, the OA/OST must conduct a search in SAM.gov and DO NOT PAY (**Section 2.4.7**) for information concerning tax liens or felony convictions. The OA/OST must search both the applicant (organization) and all key personnel listed in the application. The results of the search should be maintained in the applicant's file.

4.5.1.1.4 DO NOT PAY

The OA/OST must conduct a search of the DO NOT PAY (**Section 2.4.7**) website to determine the applicant's eligibility for receiving Federal funds. The OA/OST must search both the applicant (organization) and all key personnel listed in the application. The results of the search should be maintained in the applicant's file.

4.5.1.1.5 The Terrorist Watch List

All applicants should be checked against the list of Specially Designated Nationals (SDN), which lists individuals and organizations associated with terrorism. It is available through the U.S. Department of Treasury's Website at https://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/sdn_data.aspx.

This should be printed and placed in the award file to provide documentation that no applicants are on the list.

4.5.1.1.6 Disclosure of Lobbying Activities Form (SF-LLL)

When submitting a proposal, applicants are required to submit the SF-LLL with their application to ensure that the OA/OST and the applicant are aware of the lobbying restrictions. All lobbying disclosure forms (SF LLL) submitted should be retained in the corresponding post-award file.

The OA/OST and the non-Federal entity must take actions to avoid violating applicable lobbying regulations and statutes (**49 CFR Part 20**).

If the applicant discloses lobbying activities, the OA/OST staff should be aware of this when conducting the risk assessments to ensure that the proper segregation of funds can be achieved. If any lobbying takes place that violates the provisions of **49 CFR § 20.100**, the recipient may be fined in accordance with **49 CFR § 20.400**.

Once an award has been made, the recipient is required to submit to the OA/OST a lobbying disclosure (SF-LLL) for each payment (or agreement to make payment) to any lobbying entity

for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action identified in **31 U.S.C. § 1352(a)(2)**. This report is required only if the recipient has information to report. It is not required on any periodic basis and no report is required if the recipient did not conduct lobbying activities as identified above.

4.5.1.1.7 General Information about the Applicant

The OA/OST should check the applicants selected for an award against available websites and information sources to research the applicant's history. Suggested actions may include, but are not limited to:

- Run a search on a web-based search engine of the applicant name and any other names the applicant does business under. Check for local or national news—positive or negative—mentioning the applicant or its key personnel;
- Check the Better Business Bureau (BBB) to see if the applicant has any complaints lodged against it. This can be done by visiting search.bbb.org;
- Check the GuideStar website to view the applicant's IRS 990 form. This website is located at www.guidestar.org; and
- Obtain Dun & Bradstreet or commercial credit reports on the applicant.

The results of the search should be maintained in the applicant's file.

4.5.1.2 Applicant Risk

The OA/OST must have in place a documented framework for evaluating the risks posed by applicants before they receive Federal awards (**2 CFR § 200.205**). This evaluation may incorporate results of the evaluation of the quality of the application. The NOFO should clearly state criteria the OA/OST will evaluate to assess applicant risk. For the purpose of this evaluation, "applicant risk" refers to an applicant's ability to meet the requirements of the NOFO and be successful in accomplishing the award.

Prior to making an award the OA/OST is required to review any OMB-designated repositories of governmentwide eligibility qualification or financial integrity information as appropriate (**31 U.S.C. § 3321 and 41 U.S.C. § 2313**). This includes a review of the non-public segment of the OMB-designated integrity and performance system accessible through SAM (currently FAPIIS) (**2 CFR § 200.205(a)**).

In evaluating risks posed by applicants, the OA/OST may use a risk-based approach and may consider any items such as the following:

- Financial stability;
- Quality of management systems and ability to meet the management standards prescribed in this part;
- History of performance. This includes:
 - the applicant's record in managing Federal awards, including timeliness of compliance with applicable reporting requirements,
 - conformance to the terms and conditions of previous Federal awards, and
 - if applicable, the extent to which any previously awarded amounts will be expended prior to future awards;

- Reports and findings from audits performed under **Subpart F of 2 CFR Part 200** or the reports and findings of any other available audits; and
- The applicant's ability to effectively implement statutory, regulatory, or other requirements imposed on non-Federal entities.

The OA/OST should use the results of this risk assessment to inform their funding decisions. If risks are identified, and the decision to fund the award is made, the OA/SO should determine whether other special terms and conditions are necessary to be included in the award.

The OA/OST may make a Federal award to a non-Federal entity it has found presents unambiguous risk, if it has determined that the risk information is not relevant to the current Federal award under consideration or there are specific conditions that can appropriately mitigate the effects of the non-Federal entity's risk in accordance with **2 CFR § 200.207**.

In evaluating risks posed by applicants, the OA/OST should use a risk-based approach and consider any items noted above. If subrecipients are listed in the application, or may be used at a future date on the award, the recipients should demonstrate that searches have been conducted on the key personnel as well (**2 CFR § 200.331(b)**). Sources to use, but are not limited to, are:

4.5.1.2.1 Federal Audit Clearinghouse

The OA/OST must check the Federal Audit Clearinghouse to determine if there are any unresolved adverse findings within the past three years for the applicant (**2 CFR § 200.205(c)(4)**). If the findings do not pertain to the nature of the current application, or a corrective action plan is in place and the applicant is complying with its requirements, the OA/OST may opt to simply note the findings in the applicant's file, or consider placing special award conditions if an award is made.

4.5.1.2.2 Past Performance (FAPIS)

The OA/OST must review the past performance of applicants when the Federal share of the award is expected to exceed the simplified acquisition threshold. The past performance information is found in the non-public segment of the OMB-designated integrity and performance system accessible through SAM (currently FAPIS) (**2 CFR § 200.205(a)(2)**). The results of the search should be maintained in the applicant's file.

4.5.1.2.3 Applicants Systems and Records to Review

For competitive awards, as applicable to the current opportunity, the systems noted in sections 4.5.1.2.3.1 through 4.5.1.2.3.4 may be reviewed, which is required post-award, for applicant risk. These systems address requirements that apply post-award and may also be the subject of OA/OST monitoring.

4.5.1.2.3.1 Financial Management (Accounting) System

Each recipient must have a system that records expenditures adequate to establish that the funds are used in accordance with Federal statutes, regulations, and the terms and conditions of the award. The provisions are set forth in **2 CFR § 200.302**.

4.5.1.2.3.2 Procurement System

Each recipient must have a system for procuring property and services under a Federal award that supports the provisions in **2 CFR 200 Subpart D – Procurement Standards (2 CFR §§ 200.317–.326) and 2 CFR § 1201.317**. In addition, the OA/OST should review **Appendix II to 2 CFR Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards** to determine any additional provisions that need to be met.

4.5.1.2.3.3 Property Management System

Each recipient must have a system that records the management of property (real property and equipment) that meets the provisions set forth in **2 CFR Part 200 Subpart D – Property Standards (2 CFR §§ 200.310–.316)**. In addition, the OA/OST should review **2 CFR § 200.447** for information regarding insurance and indemnification.

4.5.1.2.3.4 Subaward System

If the recipient is a pass-through entity, then it must meet and enforce, where applicable, the requirements of **2 CFR Part 200**. The pass-through entity is solely responsible for all of its Federal funds, including funds passed through to another non-Federal entity. The decision to provide a subaward to another party does not remove the recipient’s responsibility for overseeing and administering the subaward. The OA/OST shall ensure that the pass-through entity is following its responsibilities, as noted in **2 CFR § 200.331**.

4.5.1.2.3.5 Other Systems

The OA/OST may review personnel and travel systems to determine whether they comply with **Subpart E – Cost Principles in 2 CFR Part 200**.

4.5.1.2.3.5.1 Personnel Systems

The cost principles governing personnel activities are found at **2 CFR §§ 200.430-.431**. Criteria for reviewing personnel standards are derived from the Federal cost principles and good business practices, including the following:

- The non-Federal entity maintains an employee handbook or personnel manual.
- The non-Federal entity has written current position descriptions.
- The staff in each position is qualified, based on the position description.
- There is a written recruiting and hiring procedure that ensures fairness and compliance with all applicable Federal and state requirements.
- The compensation system is reasonably tied to position descriptions and regular performance evaluations. Additionally, the compensation system is consistently applied (i.e., the same pay scale is applied regardless of funding source for the staff position).
- Fringe benefits are reasonable and consistently applied (i.e., the same benefits apply regardless of funding source for the staff position).
- The non-Federal entity’s timekeeping system meets the requirements of the applicable cost principles.

4.5.1.2.3.5.2 Travel Systems

Travel costs are the expenses for transportation, lodging, subsistence, and related items incurred by employees who are in travel status on official business of the non-Federal entity. Such costs

may be charged on an actual cost basis, or on a per diem or mileage basis in lieu of actual costs incurred, or on a combination of the two, provided the method used is applied to an entire trip and not to selected days of the trip, and results in charges consistent with those normally allowed in like circumstances in the non-Federal entity's non-Federally-funded activities and in accordance with non-Federal entity's written travel reimbursement policies.

When sampling travel expenditures, consider whether the documentation shows that the travel actually occurred and whether the expenses constitute necessary and reasonable charges.

Consider the following topics in the cost principles as they apply to the situation:

- Travel (**2 CFR § 200.474**)
- Recruiting (**2 CFR § 200.463**)
- Relocation (**2 CFR § 200.464**)
- Participant Support Costs (**2 CFR § 200.456**)
- Sabbatical Leave (**2 CFR § 200.430(h)(7)**)
- Conferences (**2 CFR § 200.432**).

4.5.1.2.3.6 Methods of Review

Depending on the level of risk for the award and experience of the applicant, the OA/OST has several options available for determining whether applicant systems can properly manage DOT funds. These include capability certifications and questionnaires, desk reviews, and site visits.

4.5.1.2.3.6.1 Financial Management Capability Certifications and Questionnaires

The OA/OST may require some or all applicants to submit a certification of financial management capabilities, also known as a financial management capability questionnaire, which surveys the applicant's accounting system and financial status.

4.5.1.2.3.6.2 Desk Reviews

The OA/OST may perform a desk review on the systems by requesting documentation from the non-Federal entity and reviewing it for compliance with Federal and DOT requirements.

4.5.1.2.3.6.3 Site Visits

The OA/OST may conduct a pre-award site visit. These site visits may be justified for a very high-dollar award to an applicant new to Federal awards to ensure Federal funds will be managed properly. Additional circumstances may also justify a pre-award site visit (e.g., a non-Federal entity that has one or more unclean single Audit report(s)).

4.5.1.3 Insufficient Application Materials

The OA/OST must have written policies and procedures for handling applications not meeting all the requirements or deadlines of the Notice of Funding Opportunity, and these should be contained in the evaluation plan, or incorporated by reference if the OA/OST has a standard policy across programs.

4.5.2 The Merit Review

Whereas the administrative review generally focuses on the applicant, the merit review evaluates the proposals. The OA/OST must design and execute a merit review process for applications. The process and the criteria for evaluation of applications must be provided, or incorporated by

reference, in the applicable NOFO. Examples of items to be included in the merit review include, but are not limited to, the following:

- Stages of the evaluation process;
- The use of external vs. internal review or advisory panel(s) for reviewing technical or scientific merit;
- Criteria upon which the merit review will be performed;
- How oversight will take place to ensure a consistent review of applications (e.g., quality control);
- How the evaluation and selection will align with the stated purpose and policy priorities of the program (e.g. program policy requirements);
- Administrative requirements that are applicable to the proposal; and
- When key decisions will be documented (e.g., Senior Review team recommendations)

The OA/OST may vary the level of detail in the NOFO regarding the merit review process, but should follow the guidelines found in **Appendix I to 2 CFR 200 § E – Application Review Information**. The intent is to make the application process transparent so applicants can make informed decisions when preparing their applications to maximize fairness of the process (**Appendix I to 2 CFR 200 § E.1**).

Additionally, some of the elements above may not need to be detailed in the NOFO, if they pertain solely to the processes used by the OA/OST to achieve the merit review process, but not the process itself.

The OA/OST must maintain written documentation on the standards used and implemented in the evaluation and selection process, and the standards of conduct covering conflict of interest and employee participation in that process.

4.5.2.1 Stages of the Merit Review Process

The OA/OST must identify the stages in the merit review process and provide the appropriate detail in the NOFO (**Appendix I to 2 CFR 200 § E.2**). The evaluation plan should include a description of the review process, including the identification of an evaluation panel(s) or levels, if applicable; provide for the development of instructions and training for evaluation members, and include information about the ratings and criteria for review, documentation of review, especially key decisions throughout the process, and a timeline for the process.

4.5.2.2 Personnel Requirements for Merit Review

Each application must be objectively reviewed and rated by technically qualified reviewers. In some instances, statutory requirements may include consulting external stakeholders.

The OA/OST must select objective reviewers that are knowledgeable in the field of endeavor or subject matter under review, be sufficiently independent of the entity applying for assistance, and be able to render an objective and unbiased evaluation. Any circumstance that might introduce a conflict of interest, or appearance thereof, prejudices, biases, or predispositions into the process must be avoided.

The OA/OST must develop a policy to avoid a conflict of interest during merit reviews (**Section 2.7) (2 CFR § 200.112)**. All reviewers must be informed of such policy and must be independent of the applications they review. Furthermore, each reviewer must certify prior to

review that, to the reviewer's knowledge, a conflict of interest does not exist, and if a conflict is identified during review, the reviewer will notify relevant staff, seek counsel, and discontinue review.

4.5.2.2.1 Independence of merit reviewers

Merit reviewers must be independent of the application(s), including the key personnel, they review. The reviewers may be a combination of Federal and non-Federal employees.

When selecting reviewers, and determining whether to use Federal or non-Federal personnel, the OA/OST must consider:

- whether a specific type of reviewer is mandated by statute or regulation;
- the type(s) of knowledge and expertise required; and,
- the availability of qualified reviewers meeting the independence criteria of this chapter and that do not have a conflict of interest.

A Federal employee may not serve as a merit reviewer for a particular application or group of applications if the employee cannot sufficiently guarantee independence post-award.

Independence could be considered compromised if the employee:

- is the award approving official;
- is responsible for encouraging the submission of the application(s);
- has provided substantive pre-application advice or technical assistance to an applicant;
- may later serve as a program official responsible for overseeing an award resulting from the NOFO or application;
- is responsible for the selection of an application in any capacity as part of his or her official duties and responsibilities;
- might be substantially involved in the project under a resulting cooperative agreement;
- is an employee of the servicing grants management office;
- is an OA/OST employee or other individual responsible for making post-award assessments of project performance or recipient compliance (including audits);
- is a Federal employee (including special government employees as defined in **18 U.S.C. § 202(a)** and **5 CFR § 2635.102(l)**) with a real or apparent conflict of interest in an application, unless a specific exception set forth by statute, regulation, or government-wide guidance applies; or,
- is any consultant, whether in a direct relationship with the OA/OST or serving as a consultant to an organization under contract to the OA/OST, who has a conflict of interest with respect to an application. The conflict of interest may be actual or apparent, and may be based on an employment relationship, professional relationship, personal relationship, or business relationship with an applicant organization and/or project personnel.

The OA/OST may establish policies clarifying independence for merit reviewers.

The above exclusions apply to any individual currently performing the functions, who has performed those functions within the 12 months immediately preceding the review, or an individual serving as a line of authority over an individual with those functions.

Non-Federal employees (considered as peer reviewers) may not have any direct relationship with the applicant organization may not have any conflict of interest for an award to the applicant's organization. For the purpose of this requirement, "conflict of interest" means a disqualifying financial interest under **5 CFR§ 2635.402**.

In addition, no two non-Federal individuals reviewing a group of applications may be from the same organization or institution if that organization or institution is an eligible recipient under the program or has interests that could be affected by the program. For this purpose, the terms "organization" and "institution" mean a single campus of a multi-campus university system, a single governmental department or agency of a state or local government, or separate legal entity. These definitions are meant to recognize that:

- an individual's connection with one campus of a university system or one agency or subdivision of a state or local government may be clearly distinct and remote from association with other components of the system or government; and,
- a broader prohibition against the use of an individual's service as an objective reviewer would impair the effective functioning of the review, e.g., where it would be necessary to go to sources external to the committee or to another review mechanism to obtain needed expertise or where an adequate number of qualified reviewers would not be available.

However, application of this definition may not be sufficient in every situation to avoid a conflict of interest within the meaning of **18 U.S.C. 208**, which prescribes criminal penalties in certain situations. Therefore, it is important for each reviewer to assess his/her particular situation and not merely rely on these general definitions.

4.5.2.2.2 Exceptions

The OA/OST may appoint as a reviewer anyone who has a conflict of interest only as permitted under **5 CFR §2635.402(d)**.

4.5.2.2.3 Financial disclosure requirements

As permitted under **5 CFR § 2634.904**, an OA/OST may require its Federal employees who will serve as an objective reviewer to submit a Confidential Financial Disclosure Report (OGE Form 450) except:

- persons who submit Public Financial Disclosure Reports (OGE Form 278) under the Ethics in Government Act are not required to submit a confidential statement; and,
- employees of another Federal agency may submit a copy of the confidential or public financial disclosure report that they have filed with their own agency.

The appointing official or designee must ensure that proper documentation is received from nominated peer reviewers regarding the presence or absence of actual or apparent conflicts of interest. The Official or designee may consult with the Office of the General Counsel and the OA/OST Ethics Adviser, as appropriate, in making this determination.

4.5.2.2.4 Instructions for Panel Members

Instructions and training related to the technical evaluation process must be available for panel members. This must include information related to:

- the evaluation and rating of applications;

- adherence to conflict of interest rules (**section 2.7**);
- criteria to be used for the evaluation;
- preparation of a review report to include documentation on specific ratings per application, and,
- a timeframe for meetings or report deadlines.

4.5.2.3 Review Criteria

The evaluation plan must include application evaluation criteria so that they will be available to the applicants and to the reviewers, who will use them in the review of each application. These criteria must be based on those established in the NOFO.

Additionally, the evaluation plan must include a description of the rating system to be used in assessing the application. If a merit review plan results in a single rating for an application, the plan should use an adjectival rating (e.g., Not Recommended, Recommended, Highly Recommended) instead of a numerical score (e.g., 0 – 100).

4.5.2.4 Documentation related to objective review

The evaluation plan must include an approach to documentation that will record the review panel’s assessment of the application in relation to the review criteria. Documentation should permit evaluator comments and include a rating for each of the evaluation criteria.

Documentation must be handled in a manner that protects confidentiality of the reviewers’ identities.

The OA/OST should develop a set of policies and procedures that permit consistency within and across programs concerning the merit review process and resulting evaluation of each of the applications. The documentation should contain the following:

- the rating of each application approved for funding;
- if not approved for funding, and an explanation for not awarding the application;
- the mechanism used to determine which of the “eligible” applications are recommended for funding;
- an explanation why the selected applications were chosen for funding over other applications;
- the amount recommended for funding and, if different from the amount requested in the application, an explanation of the difference; and,
- any conditions associated with the approval of the application, whether resulting from the objective review or programmatic review.

Documentation affecting the decision to approve, disapprove, defer, or otherwise not to fund an application must be maintained by the OA/OST in the appropriate files.

Under the Freedom of Information Act and DOT implementation regulations at **49 CFR Part 7**, DOT generally does not release information about pending applications or deliberative evaluation materials for any application.

4.5.2.5 Criteria to align with stated purpose and policy priorities of the program

Program policy factors (e.g., geographic dispersion, program balance, diversity, or complementary efforts) also may be used by the OA/OST during the selection process. Like all selection criteria, the purpose of considering these factors is to maximize the effectiveness of available Government funding and to best achieve DOT program objectives. These factors should be as objective, clearly stated in the NOFO and evaluation plans and their evaluation should be documented. Such factors must be specified in the NOFO to notify applicants that factors essentially beyond their control may affect the selection process (**Appendix I of 2 CFR 200 § E.2**). A written justification of the application of the program policy factors should be included as part of the Federal record for the OA/OST award decisions.

4.5.2.6 Administrative requirements applicable to the proposal

All OA/OST offices must have policies and procedures in place to identify the components and processes for administrative review. As part of the merit review, the OA/OST must consider the following administrative activities:

4.5.2.6.1 Review of the Budget

Application budgets should be evaluated based on the same standards to which recipients will be held after award, which are outlined in the cost principles at **2 CFR Part 200, Subpart E** for all non-Federal entities, including for-profit organizations.

4.5.2.6.2 Proposed Cost Sharing or Matching

Cost sharing or matching may be in the form of cash, contributions of services or property, and volunteer services by the non-Federal entity, or by third parties. The OA/OST must review the proposed cost sharing or matching to determine whether it complies with **2 CFR § 200.306** and the requirements stated in the NOFO.

4.5.2.6.3 Labor Rates

For applicants subject to Davis-Bacon regulations, the OA/OST may check the relevant wage rates on the wage determination website (<https://www.wdol.gov/>) and/or other wage survey sources.

4.5.2.6.4 Indirect (F&A) Rates

The OA/OST must accept any Federally negotiated indirect cost rate, except when required by statute or the OA/OST has received approval of a deviation by OMB (**2 CFR § 200.414(c)**). The OA/OST should note in the award file, the name of the cognizant agency, whether it is their own agency or another (either within DOT or another Federal agency) (**Section 3.6**).

4.5.2.7 Key Outcomes of the Merit Review and Decision to Award

The results of the merit review may be advisory, or represent the defining standard for awarding funds. The OA/OST must have policies and procedures for making the final award decisions.

4.5.3 Merit Review for non-discretionary awards

For nondiscretionary programs, all applications shall be subject to a 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, unless otherwise indicated by statutory or programmatic authority and specified in the NOFO, when published.

4.6 Notice of Funding Opportunities (Providing Public Notice of Federal Financial Assistance Programs and Federal Award Opportunities)

Competitive Federal awards must be announced in a public notice. Therefore, once the NOFO has been approved, it must be posted to Grants.gov. Although the OA/OST may elect to also publish the NOFO in the Federal Register or post it on its website, the NOFO must be posted to Grants.gov (**2 CFR § 200.203(a)**). On Grants.gov, the summary information in the NOFO is included in the synopsis section. This section does not apply to formula grant programs (**2 CFR § 1201.206**).

4.6.1 Approval of the Notice of Funding Opportunity prior to publication

All competitive NOFOs must receive approval by the Office of the Secretary through the S-10 process prior to providing public notice. Each OA/OST must have policies and procedures for obtaining approval.

4.6.2 Contents of the NOFO

There are several sections to a complete NOFO, each with required and optional information. The requirement details are found in **2 CFR §§ 200.203(a - c)** and **Appendix I of 2 CFR Part 200 – Full Text of Notice of Funding Opportunity**.

4.6.2.1 Summary Information

In a location preceding the full text of the announcement, the NOFO must include:

- The Federal awarding agency name;
- The funding opportunity title;
- The announcement type (e.g., an initial announcement of a funding opportunity, or a modification of a previously announced opportunity);
- The funding opportunity number (required, if applicable);
- The Assistance Listing (formerly CFDA) number(s);
- Key dates (e.g., due dates for:
 - applications or Executive Order 12372 submissions;
 - letters of intent or pre-applications; and
 - release of program’s application materials (if the announcement and NOFO precedes the material); and,
- Any additional information, as deemed applicable by the relevant OA/OST (**2 CFR 200.203(a)**).

4.6.2.2 Availability of the NOFO

The OA/OST must generally make all funding opportunities available for application for at least 60 calendar days. The OA/OST may make a determination to have a less than 60 calendar day availability period but no funding opportunity should be available for less than 30 calendar days

unless exigent circumstances require as determined by the OA/OST head or his or her official designee (**2 CFR § 200.203(b)**).

4.6.2.3 Full Text of the Notice of Funding Opportunity

NOFOs must follow the required format to ensure that all information needed is available to potential applicants. Details about the contents of each section of the NOFO is found in **Appendix I to 2 CFR Part 200 – Full Text of Notice of Funding Opportunity**. Each OA/OST must follow the structure, headings, and content requirements in that Appendix. The format is designed so that similar types of information will appear in the same sections in announcements of different Federal funding opportunities.

4.6.2.4 Standard Application Requirements

The OA/OST may only use application information collections approved by OMB under the Paperwork Reduction Act of 1995 and OMB's implementing regulations in **5 CFR Part 1320**, Controlling Paperwork Burdens on the Public. Consistent with these requirements, OMB will authorize additional information collections only on a limited basis.

If applicable, OA/OST may inform applicants and recipients that they do not need to provide certain information otherwise required by the relevant information collection (**2 CFR § 200.206**).

The requirements of **2 CFR 200.206** do not apply to formula grant programs (**2 CFR § 1201.206**).

4.7 Evaluation and Selection

After the closing of the NOFO, submitted applications and supporting documents should be downloaded from Grants.gov.

Each OA/OST must use the administrative and merit review processes (**Section 4.5**) established to evaluate each application. The OA/OST must also have policies and procedures for identifying those applications which will be selected for award. This process should include a confirmation that the CFO has certified the availability of funds.

4.7.1 Selection and Recommendations for Secretarial Approval

Each OA/OST must develop its own policies and procedures for submitting the recommended awards for Secretarial Approval. At a minimum, the transmittal to the Secretary's Office should contain, but is not limited to:

- Title and number of the Notice of Funding Opportunity;
- The narrative summarizing the results of the merit review;
- The awards to be funded based on criteria from the merit review, and proposed funding;
- Justification on the application of program policy factors;
- Other information as applicable

4.8 Special Award Conditions

If an application is selected based on merit, but issues have arisen concerning potential risk, compliance, expected performance goals, or the applicant is considered not responsible, the

OA/OST has the discretion to make the award with the inclusion of special award conditions (**2 CFR § 200.207**).

The OA/OST must ensure that the recipient is aware of the special conditions by including them with the Notice of Award, and may facilitate discussion with the recipient as to purpose, the requirements for fulfilling the conditions, and any procedures for removal. Any special award conditions must be maintained in the award file.

The OA/OST will monitor any special award conditions throughout the life of the award, and may remove the conditions if the recipient demonstrates compliance with the conditions. If the recipient fails to comply with these conditions, the OA/OST may take the necessary remedial actions.

Part V: Post Federal Award Program and Award Administration

After all reviews are completed, and the selection of proposals has been determined, the OA/OST must provide the necessary notice of selection, or non-selection to the applicants.

5.1 Approvals and Notifications

Once selections have been documented, but prior to notifying the recipient, the OA/OST must obtain approval from the official(s) necessary to comply with financial management and internal controls.

Additionally, some OA's have statutory provisions that may require specific prior notification to be made to congressional committees prior to announcing a Federal award (**Section 2.3**). Annual appropriations acts may also require notice to Congress.

5.1.1 Notifying Unsuccessful Applicants

For unsuccessful applicants, the OA/OST must notify those applicants that their application was not successful. For each unsuccessful applicant, the OA/OST must provide the applicant either (1) a brief, written explanation of the decision, or (2) an opportunity to receive post-selection oral feedback regarding the decision and review of their application.

5.2 Issuing an Award – Terms and Conditions and the Award Agreement

The award agreement is the legal document issued to notify the non-Federal entity that an award has been made and funds may be requested from the appropriate payment system. The Award Agreement includes all applicable terms and conditions of the Federal award.

The regulations applicable to the terms and conditions of a Federal award are located at **2 CFR § 200.207 and § 200.210**.

An OA/OST must issue an award agreement to a recipient for any action that obligates or deobligates Federal funding, whether under a new, renewal, amendment, or supplemental award (**see also Section 5.4.1.3.6**).

5.2.1 Contents of the Award Agreement

In addition to the requirements set forth in **2 CFR § 200.210**, each Award Agreement must include the following:

- If the award is supplemented or amended, an award agreement iteration number or another method to distinguish the current award agreement from previous award agreements during the current budget period;
- name of the funding program, statutory authority, and governing program regulations, if any;
- whether the Federal award is a grant or cooperative agreement;
- the purpose of the funding action (e.g., new award, supplemental award, addition of award-specific term and condition, etc.);
- a budget that breaks down costs by relevant type (categorical budget), if applicable;
- matching or cost-sharing applied as direct costs should be documented, if applicable;
- the amount of funding proposed for each future budget period within the same period of performance;
- the value and type of in-kind contributions (e.g., staff, equipment), if any;
- reference to the approved application by submission date, or reference to an amended application or correspondence amending the application;
- if applicable, an award term meeting the requirements for reporting subaward and executive compensation information in accordance with **2 CFR § 170.220(a)**;
- accounting and appropriation data or other information required for fiscal administration of the award; and
- the date the award agreement was signed by the appropriate grants management official and/or other authorized official(s).

5.3 Monitoring and Reporting

Each OA/OST will conduct the appropriate post-award monitoring for all Federal awards on a regular basis. Each OA/OST should establish guidelines for monitoring awards which meet the conditions identified in **2 CFR Part 200 Subpart D – Post Federal Award Requirements**. The guidelines may be agency-wide or program specific, depending upon the number and nature of the OA/OST programs. These guidelines should be documented and available for each opportunity.

The use of a cooperative agreement does not absolve the OA/OST from its monitoring responsibilities, and such monitoring responsibilities are separate from the Federal collaborative role in a cooperative agreement.

The OA/OST must ensure proper stewardship of Federal funds and that program objectives have been accomplished by the recipient (**2 CFR § 200.328**). The information obtained through post-award monitoring is used to determine certain aspects of continued performance (e.g., funding levels) and whether additional actions are needed to increase the potential for successful performance or to protect Federal interests.

Post-award monitoring is intended to ensure the recipient is:

- making progress in achieving the objectives of the Federal award, consistent with performance goals or milestones included in the Federal award, general activities at a given level of effort, and/or specific project activities;
- minimizing the time elapsing between the transfer of funds and disbursement;
- providing required matching or cost sharing consistent with its programmatic performance, if required;
- maintaining adequate administrative and financial systems, as identified in section 4.5.1.2.3;
- using and accounting for Federal or Federal award-generated resources, such as program income, or property in accordance with the terms and conditions of award;
- communicating to the OA/OST developments that may have a significant impact on timeframes for completing activities and meeting performance goals of the Federal award; and,
- complying with other terms and conditions of award, e.g., allowable costs and public policy requirements.

5.3.1 Responsibilities

Monitoring is a joint responsibility of the OA/OST's grants and program officials. An appropriate grants and program official must be designated as responsible for the post-award monitoring of each Federal award. This designation must be:

- part of required pre-award documentation and included in the official award file; and,
- updated if there is a change of assignment for the personnel.

While each OA/OST has its own policies and procedures for monitoring, the typical monitoring practice should have designated grants officials responsible for the administrative and financial monitoring while the program officials are responsible for monitoring compliance of the programmatic requirements.

Post-award monitoring of the Federal award is also the responsibility of the recipient. The recipient is responsible for the oversight of operations of the Federal award (**2 CFR § 200.328(a)**).

5.3.2 Post-award reporting

Recipients are required to complete post-award reports per the terms and conditions of the award. The types of reports include financial, performance, and other types of required reports. Performance reports are required at least annually; financial reports may be required annually, at the end of a competitive segment, or quarterly at most. Increased frequency of reporting is permitted when specific award conditions, as a result of a risk assessment, indicate the increased reporting frequency. The OA/OST must do the following in relation to post-award reporting:

- Require use of standard, OMB approved, government-wide reporting forms and formats and instructions for post-award reporting, to the maximum extent practical.
- Identify the post-award reporting requirements in all NOFOs that will apply generally to awards made under that NOFO.

- If required under the Paperwork Reduction Act (PRA), obtain approval from OMB for any reporting requirements which differ from standard reporting requirements or instructions.
- Identify in each award agreement, general terms and conditions that address reporting requirements, which are consistent with information in the NOFO, including:
 - type or name of report and required form or format, including as appropriate standard form numbers and links to websites with forms;
 - frequency of submission;
 - specific office or appropriate grants official, program official, or other to whom a report(s) must be submitted, if applicable;
 - means of and specific location for submission (URL, e-mail address, or physical address);
 - number of copies, which may be no more than an original and two hard copies, if applicable;
 - due date (either by date or in terms of a number of days after an event or period of time); and,
 - language indicating that delinquent, incomplete, or incorrect reports may delay certain actions, e.g., non-competing continuation awards
 - reporting requirements during any extension of the award.
- Due dates for performance or progress reports may be based on dates of the budget period (e.g., under a Federal award with a budget period beginning May 1, a quarterly report covering the period May through July and due August 30), or on a schedule consistent with that for the Federal Financial Report (FFR).
- If a Federal award has a budget period greater than 12 months, a performance/progress report must be submitted to cover each 12-month period (or portion thereof) rather than at the end of the budget period. Reporting frequency continues unchanged through extension periods.
- A non-competing continuation application can serve as an annual performance report.
- Performance reports should follow guidelines indicated in **2 CFR §§ 200.328(b) and (c)** for non-construction and construction awards, respectively:
 - a comparison of actual accomplishments to objectives for the period reported, which may include costs per quantifiable accomplishment or trend data and analysis, as appropriate;
 - reasons why performance goals were not met, if appropriate; and,
 - additional information as appropriate, including explanation of cost overruns or high costs.

5.3.2.1 Federal Financial Report – Expenditure Report

The OA/OST must require the recipient provide a report on expenditure of federal funds on a regular basis in accordance with **2 CFR § 200.327**.

End dates for interim reporting periods are identified by OMB in the FFR Instructions and are based on the OA/OSTs choice of reporting frequency. End dates should be 3/31, 6/30, 9/30, or 12/31, regardless of budget period start dates. Deadlines for quarterly and semi-annual reports are no later than 30 days after the end of the reporting period. Annual reports are due no later

than 90 days after the end of the reporting period. A recipient's request for an extension may be approved by the appropriate grants official, if adequate justification is provided.

A revised interim FFR submitted at the recipient's initiative, that claims additional expenditures, may not be accepted by the appropriate grants official for review after 9 months from the end of the reporting period. Revised FFRs submitted within the required time frame must be accompanied by a written explanation of the need for the revision. An additional claim that is timely must represent allowable costs under the award.

Regardless of when the original FFR was due or submitted to the OA/OST, the OA/OST should accept for review a revised FFR from a recipient at any time following discovery that the Federal award has been overcharged and there is a balance owed to the OA/OST.

5.3.2.2 Property reporting

The OA/OST must require that the recipient report on the status of personal property to which the Federal Government retains an interest using the SF-428, Tangible Personal Property Report, to the OA/OST. Interim property reports may be required at OA/OST discretion. A final personal property report is required at closeout.

The SF-429, Real Property Status Report is a multi-purpose form that OA/OSTs may require for general reporting about real property acquired or constructed under a Federal award, as well as for recipients to make a request related to acquisition or improvement of real property or to request disposition instructions. If applicable, this report must be submitted in accordance with the terms provided in **2 CFR § 200.329**, but must be submitted at least annually.

Intangible property is subject to the conditions in **2 CFR § 200.315**. The government-wide requirements concerning patents and inventions under Federal awards for the performance of experimental, developmental, or research work are contained in **37 CFR part 401**, Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements, and reporting requirements set forth at **37 CFR 401.14**.

A recipient's failure to comply with invention reporting requirements and any OA/OST policies may result in the loss of patent rights, imposition of remedial actions, or inclusion of specific conditions in awards.

5.3.2.3 Subaward reporting and reporting of executive compensation

The Federal Funding Accountability and Transparency Act of 2006, as amended (referred to as both FFATA and the Transparency Act), as implemented in **2 CFR part 170**, requires prime recipients to report on first-tier subawards and executive compensation for the prime and first-tier subrecipients.

The total compensation for the preceding fiscal year and the names of the five (5) most highly compensated executives must be reported, if the entity received 80 percent or more and \$25,000,000 or more of annual gross revenues from the Federal government (contracts, subcontracts, financial assistance awards, and subawards subject to the Transparency Act).

If this information about the compensation of the senior executives of the entity is publicly-accessible through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. §§ 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of

1986, the reporting under the Transparency Act is not required (**2 CFR Part 170 Appendix A – Award Term, Section I.b**).

These reporting requirements apply to all awards and subawards over \$25,000, and where the obligation date and/or the period of performance start date are on or after October 1, 2010. If a first-tier subaward was funded prior to October 1, but the subaward amount increases to the threshold of \$25,000, then these reporting requirements apply.

Awards subject to these reporting requirements include Federal awards and cooperative agreements to all entities identified in **2 CFR § 170.320**, with the following exceptions:

- Cooperative Research and Development Agreements (CRADAs), pursuant to the Federal Technology Transfer Act of 1986, as amended (**15 U.S.C. § 3710a**);
- any technical assistance, which provides services in lieu of money; and,
- transfers of title to Federally owned property provided in lieu of money, even if the award is called a grant;
- any classified Federal awards;
- any award funded in whole or in part with Recovery funds, as defined in section 1512 of the American Recovery and Reinvestment Act of 2009 (P.L. 115-5).
- Federal awards to individuals who apply for or receive awards as natural persons (i.e., unrelated to any business or non-profit organization he or she may own or operate in his or her name) (**2 CFR § 170.110 (b)(1)**);

If the recipient had a gross income from all sources under \$300,000, it is exempt from reporting subawards and subrecipient executive compensation (**2 CFR Part 170 Appendix A – Award Term, Section I.d**).

The OA/OST must include an award term in accordance with **2 CFR § 170.220(a)**.

5.3.2.4 Audits

The recipient must have an audit conducted and submitted annually, pursuant to **2 CFR Part 200, Subpart F – Audit Requirements** if the recipient expends \$750,000 or more in Federal awards during the recipient’s fiscal year. For detailed requirements on audits and review see **Part VII** of this Guide.

The scope of audits for all types of recipients must meet the Generally Accepted Government Auditing Standards (GAGAS) for their annual audit (**2 CFR § 200.514**).

For-profit organizations are not subject to the audit requirements in Subpart F, but may use these requirements for audit.

5.3.3 Monitoring approach

The monitoring approach should be determined prior to award and is subject to adjustment after award based on recipient performance and compliance. A monitoring approach includes techniques on how to measure progress towards performance goals and frequency of reporting. The approach should consider the:

- type of program (e.g., service, research, demonstration);
- governing statutory and regulatory requirements;

- type of award instrument;
- type of recipient(s); and,
- risk-based criteria specific to a program or award.

Consideration must be given to how programmatic performance, financial performance, and other aspects of compliance will be monitored in order to establish OA/OST roles, responsibilities, and expectations; identify resources needed; and determine language needed in the NOFO.

5.3.4 Annual assessment of recipient performance and compliance

The annual assessment must be consistent with the monitoring approach adopted for the program and Federal award-specific considerations.

The program official's annual assessment should consist of a review, statement and signed acknowledgement of the annual progress report. The statement should indicate the recipient's overall progress (acceptable or otherwise) and whether there are known issues. The assessment should include information obtained by telephone, email or other sources. The program official must provide the programmatic assessment to the grants official in accordance with the OA/OST award monitoring procedures.

The grants official should focus on assessing the administrative and financial aspects of the Federal award. The assessment may include a review of the single audit, compliance with financial requirements, the type of prior approval requests, and matching or cost sharing efforts.

Any need for specific award conditions, technical assistance, or remedial actions resulting from the annual assessment must be noted.

5.3.5 Documentation

All monitoring must be documented by the OA/OST. The OA/OST must document the adequacy of recipient performance and compliance at least annually during the period of performance.

Site visit or desk review results, including findings, must be documented in writing as soon as possible after completion of the review, be shared with the recipient at the appropriate time, and, as appropriate, require development of a corrective action plan by the recipient.

5.3.6 Delinquent reports

Regardless of the frequency of required reporting, the initial follow-up action for late reports should occur no later than 30 days after the established due date and is the responsibility of the appropriate grants official.

If the report is not submitted or an adequate explanation is not provided, the appropriate grants official should consider use of a remedial action, e.g., withholding of payment until the report is received (**Section 5.5**).

5.3.7 Oversight and subrecipient monitoring by pass-through entity

The OA/OST has no direct, legal relationship with subrecipients. The recipient is responsible for monitoring and ensuring compliance with applicable Federal requirements and performance expectations **(2 CFR § 200.328(a) and 2 CFR § 200.331(d))**.

Subrecipient monitoring encompasses the life cycle of subaward activity. Pass-through entities, which are the recipients identified on the award agreement, are responsible for monitoring the subrecipient's activities and compliance with the terms and conditions of the award, regardless of whether the Federal award is a grant or a cooperative agreement.

Pass-through entities are primarily responsible for making pre-award decisions concerning subawards and managing the day-to-day operations of subaward-supported activities. In addition, pass-through entities must monitor subrecipients to ensure compliance with applicable Federal requirements and the achievement of performance goals.

The pass-through entity is responsible for any non-compliance issues by the subrecipient (e.g., if the OA/OST disallows costs under a Federal award that were determined to be unallowable and were incurred by a subrecipient, the pass-through entity is responsible for repayment or offset.) The pass-through entity should take whatever remedies are available to it with respect to its subrecipient for any non-compliance issues.

A pass-through entity may impose additional reporting or other programmatic or administrative requirements or require prior approval for an activity even if it is not required by the OA/OST or use a different threshold as long as it would allow the pass-through entity to meet its obligations to the OA/OST **(2 CFR § 200.331(a)(3))**.

5.4 Post Award Considerations and Revisions to Awards

The OA/OST has the authority to make post-award adjustments and revisions to awards based on availability of funds, recipient-initiated prior approval requests, government-wide requirements, and OA/OST-specific decisions.

Some adjustments to Federal awards require a revised Award Agreement, while other adjustments do not.

5.4.1 Extensions

Awards may be extended through the use of:

- A unilateral one-time no-cost extension
- Subsequent competitions
- Non-competing continuations (amendments or supplemental awards)

5.4.1.1 Unilateral one-time no-cost extension

The OA/OST may allow the recipient to initiate, without prior approval from the OA/OST a one-time no-cost extension **(2 CFR § 200.308(d)(2))** of the final end date of the period of performance of up to 12 months unless one or more of the following conditions applies:

- The agency-specific requirements of the award prohibit the extension.

- The award funds are cancelled by law.
- The extension requires additional Federal funds.
- The extension involves any change in the approved objectives or scope of the project.

For one-time extensions, the recipient must notify the OA/OST in writing with the supporting reasons and revised end date at least 10 calendar days before the final end date of the period of performance specified in the award. This one-time extension may not be exercised merely for the purpose of using unobligated balances.

The one-time no-cost extension does not require a revised award agreement, but the OA/OST must maintain all information regarding the extension in the official file.

5.4.1.2 Subsequent competitions

In subsequent competitions, the OA/OST may consider the recipient for additional awards that extend a current one if:

- The treatment of the recipient is consistent with all other applicants;
- The recipient's performance is satisfactory; and,
- The extension is consistent with the nature of the NOFO.

The additional award will require a new Award Agreement, and will report under a new FAIN. The OA/OST will need to document the difference between the existing and the subsequent award.

5.4.1.3 Non-competing awards (Amendments or Supplements to existing awards)

If the statutory or programmatic authorities permit, the OA/OST may provide the recipient with a non-competing continuation award. The OA/OST must follow its own policies and procedures for permitting this specific type of awards. The OA/OST should refer to the budget and performance revisions provisions indicated in **2 CFR § 200.308**. Non-competing continuation awards require a new or revised award agreement and may require a new FAIN, and all information regarding the non-competing continuation must be retained in the award file.

5.4.1.3.1 Applications for Non-competing continuations

The OA/OST must have specific instructions for completing and submitting non-competing continuation applications, if required. These instructions may be unique to the funding opportunity, or a set of instructions covering all programs. The OA/OST must use the instructions consistently and fairly for all recipients requesting a non-competing continuation.

At a minimum, the non-competing continuation application instructions must specify the following:

- required means of submission;
- required forms and documentation to be submitted, including instructions;
- due date for submission (generally expressed as no later than "x" days before the end date of the budget period) and consequences of a late submission;
- approved funding level for the upcoming budget period;
- requirements to request any budget or project revisions; and

- a requirement that the recipient must provide its estimated unobligated balance separately from the approved budget for the upcoming budget period and explain why an unobligated balance exists.

5.4.1.3.2 Review of non-competing continuation applications

The appropriate programmatic and grants management officials must review the non-competing continuation application and provide a recommendation for continuing or discontinuing the award. The review must be documented and included in the official grant file.

Non-competing continuation applications are not required to undergo the objective review process, unless provided for in statutory or program authorities.

As a prerequisite to continued funding, the OA/OST must perform the following activities:

- Determine whether the recipient has submitted all required or applicable certifications and assurances;
- Review the required OMB-designated repositories of government-wide data such as SAM and FAPIIS, and make award decisions accordingly;
- Review the non-competing continuation application budget. If a categorical budget was submitted, the appropriate grants official should analyze the budget to ensure that any rebudgeting of funds across categories, complies with the OA/OST's policy on rebudgeting authority.
- Review comments on the recipient's progress.
- Review the most recent FFR and other available financial information.
- Determine whether any estimated unobligated balance should supplement the new award or be used as an offset; and,
- Review available information to determine compliance with award conditions.

5.4.1.3.3 Continuation of funding

For multi-year projects with multiple funding periods, the OA/OST should develop policies and procedures for identifying criteria which would affect whether or not subsequent funding would be made available. The OA/OST is not required to provide future funding if:

- the recipient is not making adequate progress;
- the recipient has not complied with the terms and conditions of previous budget;
- program priorities change, as per new or revised legislation; or,
- the amount available to the OA/OST for funding has been reduced or eliminated.

The OA/OST may withhold support for a non-competing continuation award if any of these situations occur, subject to any appeal rights that may be available to the recipient. The recipient should submit a non-competing continuation application each year as a prerequisite to continued funding if a competitive segment is comprised of multiple funding periods.

5.4.1.3.4 Withholding of support

The OA/OST may allow the recipient to spend previously obligated funds by extending the current budget period if an OA/OST withholds support because of a change in program priorities or lack of appropriations, as allowed under law. The current budget period then becomes the last budget period of the period of performance and a no-cost extension is granted to allow additional

time for completion of the project. If the appropriation is reduced and the OA/OST reduces, but does not withhold support, the OA/OST must renegotiate non-competing continuation awards, but the recipient organization is not required to go through the competitive process.

If support is withheld as a remedy for non-compliance with the terms and conditions of award, the OA/OST must provide the recipient an opportunity to object and challenge the action (**2 CFR § 200.341**).

If an OA/OST withholds support for any reason and recipient challenges to that action, if any, are unsuccessful, the OA/OST cannot provide any additional funding to this recipient or make any subsequent award pursuant to the original application.

5.4.1.3.5 Use of unobligated balances

Note: As used in this section 5.4, “obligations” means orders placed for property and services, contracts and subawards made, and similar transactions during a given period that require payment by the non-Federal entity during the same or a future period. (**2 CFR § 200.71**).

“Unobligated balances” means the amount of funds under a Federal award that the non-Federal entity has not obligated. (**2 CFR § 200.98**). These definitions differ from how the term “obligation” is used in Federal fiscal law. Funds awarded under a Federal financial assistance award may be “obligated” by the OA/OST for the purpose of Federal fiscal law, but “unobligated” for the recipient as that term is used in this section 5.4 and in **2 C.F.R. Part 200**.

If permitted by statute, program authority, or appropriation, unobligated balances (**2 CFR § 200.98**) of funds can be carried over to the next or future budget period to supplement the award in future budget periods or they can be used to offset (reduce) the amount of new Federal funds awarded in those periods. The OA/OST must determine the appropriate disposition of unobligated balances, regardless of whether the recipient operates under the expanded authority.

Upon receipt of the annual FFR or other required financial reporting mechanism, the OA/OST will compare the total of any actual unobligated balance and the Federal share for the current budget period with the Federal share of the approved budget for the next budget period.

5.4.1.3.6 Issuance of an amended Award Agreement

The OA/OST must issue an amended Award Agreement to a recipient for the following types of changes:

- an increase or decrease to the amount of funds obligated, regardless of the basis;
- budget period or period of performance duration;
- a revised categorical budget based on a change in scope;
- a revised categorical budget to identify rebudgeting that exceeds or is expected to exceed 10 percent of the total budget (**2 CFR § 200.308(e)**);
- carryover of an unobligated balance of Federal funds;
- change in the recipient from one named entity to another;
- change in PI/PD or other key personnel listed in the Award Agreement;
- addition, modification, or removal of special award conditions or other terms and conditions of the award;
- change in scope that does not require significant rebudgeting; or,
- termination of award or other remedial action, if appropriate.

The OA/OST is not required to issue a revised award agreement to a recipient if there is a change in the OA/OST officials or a change to a particular type of expenditure that does not require rebudgeting.

5.4.2 Transfer of award for changes in recipient or changes in recipient status

Consistent with appropriations law requirements and OA/OST policies, the OA/OST may effect a change in recipient under discretionary Federal awards under any of the following circumstances:

- The PI/PD under an award is transferring to a different organization and all parties agree to transfer responsibility for the Federal award to the new organization.
- A Federal award has been terminated or a non-competing continuation award (for the Federal award to be transferred) has been withheld because of concerns based on a programmatic or financial review.
- Successor in interest or recipient name change.
- Other circumstances approved by the Office of the Secretary and the Office of General Counsel.

Since award agreements are legal instruments, the OA/OST must develop policies and procedures, and maintain all documentation from all parties involved in the agreement, relating to the transfer of an award, regardless of the reason for the transfer. The OA/OST must issue an amended award agreement to the recipient to whom the award is being transferred.

5.4.2.1 Transfer of an award for changes in PI/PD

A transfer application cannot be accepted for review in the absence of a written statement from the original recipient relinquishing the award (“relinquishing statement”).

The relinquishing statement and transfer application must be submitted to the cognizant grants official before the anticipated start date for the new organization, and as far in advance of the transfer as possible.

In determining whether to approve a transfer, the OA/OST should consider:

- eligibility and risk evaluation of the new recipient to receive the award;
- time remaining in the project period against the time needed to complete the project;
- remaining funding against the budget needed to complete the project;
- effect of the transfer on the timely and successful completion of the project as originally approved;
- proposed scope or objective changes, which may delay the transfer, pending negotiations and prior OA/OST approval of scope and budgetary revisions;
- adequacy of facilities and resources available at the new recipient; and,
- any other relevant considerations.

The merits of authorizing the transfer of an award or a proposed change in the PI, are to be given careful consideration by program and grants management personnel.

Partial relinquishments may be permitted, depending on circumstances, after consultation with the Office of General Counsel (OGC).

5.4.2.1.1 Relinquishing statement

The relinquishing statement from the original recipient must include, as applicable, the following information:

- date of the relinquishing statement;
- name and address of original recipient;
- name of PI/PD;
- Federal Award Identification Number (FAIN);
- statement of relinquishment of interest in the Federal award(s) and future claims to remaining unobligated balances;
- effective date of the end of support to the original recipient;
- a list of all items of non-expendable personal property (equipment) with an original acquisition cost of \$5,000 or more, purchased in whole or in part with Federal award funds, which will be transferred;
- an estimated status of funds awarded for the currently active budget period as of the effective date of the end of support; and,
- the signature of the authorized organizational representative (AOR).

If the recipient does not agree to the transfer of all equipment acquired primarily under the Federal award, the OA/OST may:

- approve the request not to transfer; or,
- exercise its right to transfer title to the equipment as provided in **2 CFR § 200.313**.

5.4.2.1.2 Transfer application

At a minimum, the transfer application from the new organization must include the following:

- cover page signed by the AOR of the new organization, including its Dun and Bradstreet Universal Numbering System (DUNS) number;
- either a narrative detailing the new, proposed scope of the project, or the originally approved plan and a statement indicating that no change is anticipated. The proposed revised scope is not binding on the OA/OST, but can be part of negotiations between the OA/OST and proposed recipient;
- budget for the current year and any future years, which reflect the remaining time, deliverables, and resources;
- comprehensive progress report, provided by the original recipient, covering the period from award of the Federal award to the original recipient, to the time of the proposed transfer to the new recipient (this report will be considered to fulfill the requirement at closeout for a final performance progress report from the original recipient), and submitting any other relevant close-out reports, such as tangible or real property reports;
- any required project-specific assurances, certifications, or verifications;
- updated biographical sketches for the PI/PD and existing key personnel, and biographical sketches for a new PI/PD, if appropriate, or any proposed new key personnel; and,
- detailed list of any award funded equipment being transferred to the new recipient (inclusion of this list in the application from the new recipient indicates its acceptance of title to that equipment).

If the application is approved, an award may be made to the new recipient without competition for a period not to exceed the remainder of the previously approved period of performance.

The amount for each remaining budget period in the period of performance will be calculated as follows:

- The award for the first budget period will be up to the amount of direct costs available at time of transfer; e.g., amount of relinquished funds, plus associated indirect/facilities and administrative (F&A) costs at the new recipient's negotiated rate.
- For any remaining budget periods after the initial budget period, the award amount will be the direct cost amount previously recommended plus indirect/F&A costs based on the new recipient's negotiated rate.

If the OA/OST determines that the transfer of the project to a new organization is not approved, then either the original recipient must continue the project, or the project must be terminated.

5.4.2.2 Replacement award as a remedial action

Change of recipient may also be accomplished by ending the original award, through the remedial actions of termination (unilateral or by mutual agreement) or withholding support, and awarding a replacement award for the same work plan, through a non-competitive process.

The award may be transferred following consultation with the OGC to ensure that use of the replacement award process is legally justified.

A replacement award may be awarded for a single budget period and may not commit to additional funding.

A replacement award may be made without the need for competition or objective review if all of the following circumstances apply:

- The program office documents a continuing need for the project or program;
- The time required to obtain competition would seriously jeopardize the success of the project or put at risk the physical or mental health of the people the project services;
- There will be no significant change in the scope or objectives (including any reduction) of the previously approved project or activity;
- The proposed replacement recipient is eligible to receive the award; and,
- The proposed recipient has the facilities and resources to successfully complete the project.

If a replacement award cannot be awarded, a new award would be made to a new recipient for the same or similar services covering the affected service area. Each budget period would be funded from the appropriation for the fiscal year in which the new award (and any subsequent non-competing continuation award) is made.

The OA/OST must determine what information is required from the proposed recipient to make the above determinations, as well as to ensure that the organization demonstrates its willingness to undertake the legal obligations of an award. At a minimum, this information must include the following:

- cover page signed by the AOR of the proposed recipient, including its DUNS number;

- detailed budget and narrative for the full duration of the replacement Federal award;
- a narrative indicating how the organization will meet programmatic requirements. This narrative should be in a level of detail that allows the OA/OST to prepare a single-source justification for an emergency application/award;
- any required project-specific assurances, certifications, or verifications;
- description of the facilities and other resources available to carry out the project; and,
- biographical sketch for anyone that will be considered key personnel.

A replacement award must be awarded in a timely manner. The OA/OST may award a replacement Federal award regardless of whether the original recipient has exhausted or forfeited its rights challenging the action under **2 CFR § 200.341**. Any hiatus of more than three months between the original and the replacement award must be justified and documented in the official award file.

If a replacement award results from the termination of an award for material failure to comply, and the original recipient is able to challenge that action under **2 CFR § 200.341**, the award agreement for the replacement award must incorporate a condition that notifies the new recipient of the possibility that the award may be terminated if the original recipient is successful with its challenge.

The OA/OST should seek to obtain a relinquishing statement for a replacement award from the recipient whose funding has been terminated or withheld, particularly in those situations where the award has been terminated at the original recipient's request.

If, at the expiration of the replacement award's period of performance, the OA/OST determines that there is a continuing need for the project/services covered by the replacement award, it must follow the procedures that govern the requirements for competition and objective review, respectively.

5.4.2.3 Issuing an amended award agreement

Following a determination that a change of recipient (whether a transfer or a replacement award) meets the requirements of applicable policies, the OA/OST must issue an amended award agreement to the original recipient organization:

- reflecting the revised budget/period of performance end dates;
- removing any future-year support;
- stating the Federal and non-Federal share, if applicable; and,
- deobligating any funds remaining from the original award. If the deobligated amount is based on an estimate and the amount subsequently changes, a further amendment may be necessary. The OA/OST should advise the original recipient of the amount intended to be deobligated prior to issuing an award agreement and allow the recipient five business days to provide alternate information.

The OA/OST must issue an award agreement to the new recipient that includes the following:

- the new FAIN;
- the new starting and ending dates of the budget period and period of performance:
 - for a change in the PI/PD's organization, this should be an indication of the length of the initial budget period, based on time remaining in the applicable budget period or

- the original award, and any future years of support remaining in the previously approved period of performance; and,
 - for a replacement Federal award, this can be the duration of the budget period/period of performance;
- the direct cost amount representing:
 - the balance reported on the relinquishment statement;
 - the estimated amount remaining; or,
 - if the change of recipient occurs on the anniversary date of the project, the previously committed direct cost level for the applicable budget period and any future years;
- applicable indirect/F&A costs;
- if an estimated relinquished amount is used, an indication that the amount awarded is subject to change as a result of the closeout of the original award and may be adjusted downward;
- a list of any real property or title to equipment which is being transferred to the new recipient and any associated requirements. A revised Award Agreement must be issued once the OA/OST has obtained a definitive list of all real property or titles to equipment which have been transferred to the new recipient; and,
- a reference to the previous award, including dates, award amount, expended amount, unexpended amount, deobligation date (if applicable), closeout date, and any other pertinent information.

The OA/OST must close out the award to the original recipient organization.

5.4.2.4 Change in recipient status

A change in recipient status may result from either a name change or successor-in-interest (SII). Successor-in-interest means a successor to another's interest in property, especially a successor in ownership of a business that is carried on and controlled substantially as it was before the transfer.

Recipients are responsible for advising the OA/OST from which they received an award(s) if they are involved in a successor-in-interest (SII) or name change situation as this may affect one or more aspects of their awards (e.g., registration in SAM or designated payee). Advance consultation will help to ensure payments are not interrupted. The OA/OST must advise the recipient on the formal documentation required to be submitted and the time it will take to effect the change and coordinate within the OA/OST.

5.4.2.4.1 Successor in interest (SII)

Following legislative or other legal action such as a merger, divestiture, or other corporate change, the OA/OST may recognize an SII when it is consistent with the interests of the OA/OST to ensure continuation of financial and administrative functions; otherwise, the Federal award no longer has a legitimate recipient and the OA/OST should terminate the Federal award.

Upon receipt of a formal notification of a planned or actual change in recipient status, the OA/OST must review the information provided, in consultation with OGC and any other awarding agency within DOT, for completeness and to ensure the eligibility and suitability of the organization. The OA/OST has the right to seek clarification or additional information from the organization as it deems necessary.

If multiple OAs/OSTs have awards with the recipient requesting SII, then the OA/OST with the largest amount of Federal award funding should take the lead.

When it is consistent with the interests of the OA/OST to recognize an SII, the OA/OST should do the following:

- Request that a letter signed by the AOR of the current recipient (transferor) and the SII (transferee) be sent to a designated OA/OST. The letter must do the following:
 - Stipulate that the transfer will be properly completed in accordance with applicable law;
 - Indicate that the transferor relinquishes all rights and interests in all the affected awards, to include subcontracts awarded by the recipient using Federal award funds and supporting project goals and deliverables;
 - Request that the OA/OST(s) modify its/their records to reflect the transferee as the recipient of record;
 - State the expected effective date of the transfer;
 - Provide the transferee's Taxpayer Identification Number/Employer Identification Number and DUNS number;
 - Include verification of the transferee's compliance (or intent to comply) with applicable requirements, including continued accountability for property acquired under the Federal award(s);
 - Include a list of all affected DOT awards (active and pending) with the following information for each or for the organization, as applicable:
 - FAIN;
 - name of PI/PD;
 - current budget period and period of performance;
 - completed appropriate pages for each affected Federal award showing the transferee as the recipient organization, in particular, any page that is signed by the AOR at the transferee organization; and,
 - copy of the current negotiated indirect cost/F&A rate agreement for the transferee, if a current rate agreement exists; and,
- If the SII will occur during a budget period rather than on the anniversary date of the award, the transferor also must provide estimated levels of current-year direct and indirect/F&A costs remaining as of the SII effective date. The estimate may be reported on the relinquishing statement for each affected award or may be itemized by FAIN as an attachment to the letter.

With the letter, but in all cases prior to the execution of an SII, the OA/OST must ensure that the transfer will be properly affected in accordance with applicable law. To that end, the OA/OST should request the recipient submit the following documents:

- a properly authenticated copy of the instrument that transfers the assets such as a bill of sale, certificate of merger, or decree of court;
- a certified copy of the recipient's management resolutions authorizing the transfer of assets, if applicable;
- a properly authenticated copy of the certificate and articles of incorporation of the transferee if such corporation was formed to receive the assets involved in the performance of the OA/OST or DOT awards; and,

- opinion of counsel for the transferor and the transferee that the transfer was properly completed in accordance with applicable law and the effective date of transfer.

Prior to executing an SII, the lead OA/OST must consider whether the successor organization is listed as an excluded party in SAM and review past performance and ethics in FAPIIS. If the successor organization is subject to special award conditions, applicable documentation should be modified to show both the original and the new name of the organization to ensure appropriate linkage between organizational names.

Upon review, receipt acknowledgement, and acceptance of the information provided by the recipient by the OA/OST and OGC, the appropriate official will sign the SII agreement for awards on behalf of all affected OA/OSTs and return it to the transferee and transferor for their signatures.

Each OA/OST with an affected award(s) must issue a revised award agreement(s) to show the transferee as the recipient of record.

5.4.2.4.2 Name change

For name changes that do not affect the rights and obligations of the recipient, the recipient must provide written notification to the affected OA/OSTs and must include the effective date of the change. Name changes can be processed at any time, but no later than the next award action (e.g., non-competing continuation award) and the organization will submit the appropriate pages signed by AOR, as specified by the OA/OST, with the new information as part of that action.

For a name change to be properly effected, the OA/OST must receive and acknowledge acceptance of a copy of the instrument that effected the name change, authenticated by a proper official of the state having jurisdiction. The OA/OST may also want an opinion of counsel for the recipient that the change of name was properly effected in accordance with applicable law.

Receipt of the above documents and acknowledgment of acceptance by the OA/OST will constitute a name change agreement.

5.4.2.4.3 Issuing an amended award agreement

Upon completion of all necessary reviews, the OA/OST will issue a new award agreement with the respective changes noted.

5.4.3 Budget Revisions

Rebudgeting, or moving funds between direct cost budget categories in an approved budget, is considered significant when expenditures in a single direct cost budget category, increases or decreases from the approved budget amount for that budget period by 10 percent for awards that exceed the simplified acquisition threshold (**2 CFR § 200.308(e)**), including moving funds to a cost category with no current funding allocation.

5.4.3.1 *Prior approvals for budget or program revisions*

Prior approval requests encompass budgetary and programmatic needs on the part of the recipient organization, and require a timely review and response by the OA/OST to ensure continuity of the projects.

The OA/OST must review each request for prior approval to determine if what is requested requires prior approval (**2 CFR § 200.407**). If not, the OA/OST should respond that prior approval is not required.

The OA/OST is required to respond to requests for prior approval of budget revisions within 30 calendar days of receipt, whether by letter, e-mail, a web-based system, or other means (**2 CFR § 200.308(i)**).

Prior approval requests must be a formal, written document, that is:

- signed by an AOR of the recipient, including any necessary documentation; and,
- submitted to the OA/OST sufficiently in advance of making the proposed change, to allow adequate review of the request.

Approval must be granted by the OA/OST before the recipient, or subrecipient, undertakes any of the activities contained in the recipient's request.

A recipient may not appeal disapproval of a prior-approval request made in advance of incurring the costs.

5.4.3.1.1 Budget and program plan revisions requiring prior approval

The non-Federal entity must request prior approval for the budget and/or performance revisions stated in **2 CFR § 200.308(c)(1)** for non-construction awards, and **2 CFR §§ 200.308 (g)(1 - 3)** for construction awards.

5.4.3.1.2 Retroactive requests for prior approval

If the recipient enacts the change before receiving the approval, the request is treated as a retroactive request (**2 CFR § 200.308(d)(1)**). If the recipient implements the change without prior approval, and the approval is denied, the recipient assumes responsibility for any costs that were not approved and for completing the project utilizing the current terms and conditions of the award.

The OA/OST can accept a retroactive request and still grant prior approval. The OA/OST must review such requests in the same manner as requests submitted in advance.

If the OA/OST disapproves a retroactive request, the disapproval must indicate the underlying basis for the disapproval. In addition, the response must identify the recipient's appeal rights, if any.

5.4.3.1.3 Issuing an amended award agreement

The OA/OST has discretion whether to issue an amended award agreement based upon rebudgeting. An amended award agreement is not necessary to indicate the use of prior approval.

5.5 Remedies for Non-compliance and Appeals

In the event that recipients do not comply with Federal award requirements, the OA/OST may consider the use of a remedial action(s) to protect the integrity of Federal funds. A remedial action should be used only after other actions to improve a recipient's compliance or

performance have not been successful, or the OA/OST determines that other actions are unlikely to improve compliance or performance.

The OA/OST has discretion on whether to take a remedial action, and the appropriate action to be taken, unless:

- there are limits in authorizing statutes and regulations; and/or,
- an office outside of the OA/OST has authority to undertake a compliance or remedial action.

If a remedial action is deemed necessary, the OA/OST should consider the following in determining the appropriate action:

- Consistency with the type, duration, and significance of the non-compliance or other findings and the OA/OST's programmatic needs;
- A plan for continued assistance if immediate action is necessary (e.g., continuation of research or construction);
- Consistency with the recipient's willingness and ability to correct the non-compliance or to address or change other situations;
- Responsiveness to remedial actions;
- Ability to ensure that correctable deficiencies are resolved and that the action does not engage in a cycle of recipient non-compliance concerning the same issues; and,
- Timeliness initiated following documented finding(s), which includes all relevant information, correspondence, and views regarding the compliance or performance issue, or after other actions to improve a recipient's compliance or performance have not been successful.

The OA/OST may use a single remedial action or a combination of actions. The types of remedial actions (**2 CFR §§ 200.338 - .340**) that may be used consist of, but are not limited to:

- cost disallowance;
- temporary withholding of cash payments;
- conversion to the reimbursement payment method, if applicable;
- post-award suspension of award activities or termination;
- withholding of additional support; and,
- government-wide recipient suspension and debarment.

If the OA/OST takes a remedial action for non-compliance, the OA/OST must provide the recipient an opportunity to object and challenge the action (**2 CFR § 200.341**).

5.5.1 Cost disallowance

Costs, including those used as matching contributions, may be determined to be unallowable based on the requirements in the applicable cost principles, audit findings, eligible programmatic activities as stated in the NOFO, terms and conditions of the award, and special award conditions that may indicate disapproval of a cost/activity. Costs may be disallowed at any time during the project period or at closeout based on audit findings, information in reports, or on other bases.

If an OA/OST disallows costs, the recipient must repay the agency, including interest. If the repayment is made through an offset of Federal award funds, the recipient will be required to

maintain project activities at the previously approved level. Expenditures from non-Federal funds in the amount of the offset will be subject to the Federal cost principles and all other requirements that would apply to the expenditure of Federal funds.

5.5.2 Temporary withholding of cash payments

The OA/OST may limit the recipient's ability to make drawdowns (advance payment system), or receive payments (reimbursement payment system), referred to as withholding a payment, may be used as a remedial action, provided:

- It is coordinated between the appropriate grants official and the designated paying office. The paying office cannot override or change the OA/OST decision.
- It is used to achieve compliance with a specific requirement within a reasonable period, such as submission of a report.
- Payment withholding does not exceed 60 days, unless the OA/OST has a specific policy identifying a different time frame.

Once the OA/OST lifts the restriction and takes no further remedial action, the recipient can draw funds or receive the payment to cover the period during which the restriction was in effect.

5.5.3 Conversion to the reimbursement payment method

To address a systemic cash management issue that will take longer to resolve than the period allowed for payment withholding (longer than 60 days), a recipient may be converted to the reimbursement payment method when an award originally provided for advance payment.

A recipient cannot appeal conversion to use the reimbursement payment method.

Once the recipient corrects the deficiency(ies) and monitoring indicates compliance, the OA/OST may allow the recipient to resume advance payment. If the deficiency continues beyond a reasonable period, as defined in the notification letter, additional remedial action(s) may be considered. During the life of an award, the OA/OST should not employ a strategy of repeatedly switching a recipient back and forth between the reimbursement and advance payment methods, as a means of obtaining compliance but should instead consider taking additional remedial action.

5.5.4 Post-award suspension of award activities

Suspension of award activities is a post-award action that affects ongoing OA/OST award(s) based on the agency's determination that a recipient is not complying with the terms and conditions of its award(s). Whether as a precursor to termination or an action that results in the correction of deficiencies by a recipient, post-award suspension of award activities does not have any automatic broad impact on other Federal awards. While a post-award suspension of award activities is in effect, it applies only to the award(s) specified by the OA/OST.

If withholding of payment or less severe remedial actions does not achieve the desired result or the OA/OST determines that other remedial actions are unlikely to improve compliance or performance, the OA/OST can temporarily suspend award activities pending corrective action by the recipient or termination of the award.

The post-award suspension of award activities period should be commensurate with the corrective action needed, but should not exceed 120 days at the outset, unless the OA/OST has a specific policy identifying a different time frame. If the recipient is not making sufficient progress in correcting the identified deficiencies, the OA/OST must consider both the financial and programmatic requirements in determining the appropriate award extension to avoid the need for termination.

The notice of post-award suspension of award activities must clearly indicate:

- what project activities, if any, will take place during the period of suspension;
- what costs the OA/OST will reimburse if the remedial action is ultimately lifted and the award resumed;
- what corrective actions must occur during the remedial action; and,
- the OA/OST's intent to terminate the award if the recipient does not meet the conditions of the remedial action.

5.5.5 Withholding of additional support

The OA/OST may withhold additional support by not making a non-competing continuation award (i.e., the next successive and any remaining budget periods) within a previously approved competitive period of performance. Withholding of support is considered a remedial action if it addresses failure to comply with terms and conditions of the award or failure to make suitable progress. Regardless of the basis, withholding is a final action that does not allow for corrective action under that award or later reinstatement.

5.5.6 Termination

Except when an immediate termination action is needed to protect the Federal government's interest, the OA/OST should terminate an award only when all other possible remedial actions have been exhausted and there is no reasonable expectation that the recipient will complete the necessary corrective actions (**2 CFR § 200.339**). As part of a termination action, the OA/OST must consider what actions it might take in the event of future awards to that recipient. The final costs of a terminated award may be negotiated, at the discretion of the OA/OST, if the recipient has non-cancelable obligations. Obligations incurred in anticipation or contravention of a termination are not allowable. The OA/OST may unilaterally terminate an award for material failure to comply with the terms and conditions of the award, without first providing for post-award suspension.

If non-compliance issues affect multiple awards and termination of all awards to the recipient is not viable, (e.g., programmatic needs cannot be met), the OA/OST should consider other actions, such as withholding payment, to try to achieve systemic compliance. Termination remains an option at a later time.

The OA/OST may terminate an award at the request of the recipient or by mutual agreement between the awarding agency and the recipient. This is often referred to as termination for convenience.

If a recipient requests termination, in whole or in part, the OA/OST should take the necessary action to comply with that request, including planning for continuation of services or other ongoing needs and/or considering a replacement Federal award. If a recipient requests

termination of only a portion of a Federal award, the OA/OST may decide to terminate the remainder of the award if in the best interest of the program. This is often referred to as a termination for cause.

5.5.7 Government-wide suspension and debarment

A non-compliance issue may be severe enough to warrant government-wide suspension or debarment of an individual or Federal award recipient. Suspension or debarment issues at this level must be referred to the Suspending and Debarment Official with the OA/OST or the Office of the Inspector General (**2 CFR Part 180**). While suspension and debarment is still considered a remedial action, it has multiple facets and may involve various determinations in different phases of the process, including determinations:

- pre-award at the time of a new or renewal award as to whether an entity or any of its principals are currently suspended or debarred;
- prior to award of a noncompeting continuation or supplemental award whether an entity or any of its principals has been suspended or debarred subsequent to the OA/OST's new or renewal award;
- regarding how to treat any ongoing awards if an entity has already been suspended or debarred;
- regarding a recipient's compliance with suspension and debarment requirements, if applicable; and,
- based on recipient's history with the OA/OST, including previous remedial actions, special award conditions, and other available information to recommend suspension or debarment of an entity or any of its principals.

5.5.8 Written notifications of remedial actions to recipients

The OA/OST should inform the recipient of the intention (initial notification) to use remedial actions, and the final decision (notification implementing the action) concerning the selection of the actions. Both notifications must be addressed in writing to the authorized organization representative. If immediate remedial action(s) must occur to protect public or the interests of the Federal government, an initial notification is not required.

The OA/OST must send the written notifications by certified mail, return receipt requested, or by other method that allows for confirming receipt of notification. In the case of an immediate post-award suspension of award activities, the OA/OST notification must indicate whether the action will be followed by a termination or whether there is any expectation of corrective action by the recipient.

The notification of a proposed remedial action must clearly specify the following:

- the remedial action being proposed;
- the non-compliance or other reason for the proposed action and the statutory, regulatory, policy provision, or term or condition that is the basis for that determination;
- the FAINs of the potentially affected award(s);
- corrective actions needed, as appropriate;

- the due date for the recipient’s written response, including the information required (e.g., submission of delinquent reports, or corrective action plan), which generally is 30 days from the date of the OA/OST’s written notification; and
- the intended effective date of the remedial action in the absence of a satisfactory response.

If the OA/OST receives no response from the recipient to its initial written notification, the OA/OST must proceed with the remedial action. Prior to implementing the action, the appropriate grants official must notify the recipient in writing of the following:

- a summary of the initial notification letter, including the non-compliance issue and all relevant background and basis of the OA/OST decision, reference to the pertinent statutes, regulations, or other governing documents;
- a specific indication of the action the OA/OST is taking, its scope (e.g., full or partial termination), and the effective date;
- Federal award number(s) of the affected award(s);
- the due date for compliance for a temporary action such as withholding of payment or post-award suspension of award activities;
- the effect on the recipient’s ability to incur reimbursable costs;
- the effect on financial and performance reporting (e.g., for a termination, the due date for the final FFR, performance, and other reports);
- the proposed adjustment funding amount, if a final amended Award Agreement will be needed, if a recipient’s appeal right has lapsed and no appeal has been filed/accepted;
- any accounting instructions (e.g., for return of unexpended funds and due date); and,
- any appeal rights.

5.5.9 Appeals

Appeals procedures differ depending on the program or issue, and the nature and severity of the dispute. If an OA/OST is using a remedial action against a recipient, the OA/OST must provide instructions to recipients concerning if and how they can appeal the OA/OST’s decision.

The OA/OST must attempt to promptly resolve disputes or issue final decisions in matters affecting the interests of recipients.

Part VI: Closeout of Awards and Programs

6.1 Closeout of Awards

Upon the end of the period of performance of the award, recipients have ninety (90) calendar days to submit all financial, performance, and other reports required in the terms and conditions of the award, or receive approval, with a fixed due date, for an extension for the submission of a report(s) from the OA/OST (**2 CFR §200.343(a)**). If the award does not identify the time of day that the period of performance ends, then the period of performance ends at 11:59PM, local time for the recipient, on the period of performance end date.

The closeout process for each award should be completed no later than 365 days after receipt and acceptance of all required final reports from the recipient (**2 CFR § 200.343(g)**).

Closeout may extend beyond 365 days if any of the following circumstances apply:

- Unresolved monetary finding(s) related to that award in an audit;
- An open legal action regarding the award; or,
- Programmatic considerations require delaying the closeout. The recipient has been granted an extension for the submission of a report(s) by the OA/OST. The recipient must provide a written request with sufficient justification for warranting the extension within 90 days of the expiration date of the award.

An award may be closed out prior to the submission of the final year's Single Audit. If, after the closeout has been completed, a subsequent audit report identifies unallowable costs, the OA/OST has the right to disallow costs and recover an appropriate amount based on sustained audit findings (**2 CFR § 200.344**).

6.1.1 Unacceptable final reports

If the OA/OST does not receive acceptable final reports in a timely fashion and determines that it cannot complete a closeout with the cooperation of the recipient, the OA/OST may elect to complete a unilateral closeout.

6.1.2 Financial reconciliation upon completion of an award

In performing the financial reconciliation, the OA/OST must ensure that the amount authorized for expenditure, the amount disbursed by the paying office, and the amount spent by the recipient are all reconciled.

6.1.3 Property considerations

The disposition of property is not required as part of closeout. The recipient may continue to use the property after closeout, as permitted in **2 CFR 200 Subpart D – Post Federal Award Requirements – Property Standards and 2 CFR § 1201.313**. Specifics related to the disposition of Federally-owned property are outlined in **2 CFR § 200.311**.

For any tangible personal or real property acquired or improved under the award, it must be determined whether:

- The recipient or beneficiary will continue to use the property after closeout; or
- The recipient is requesting disposition instructions; or
- The OA/OST wants to exercise its right to transfer title after reimbursements due to the OA/OST have been received.

If the OA/OST provides disposition instructions, the OA/OST must:

- Have the recipient validate that the property has been disposed of as indicated;
- If applicable, ensure that the sales proceeds are credited in accordance with the terms and conditions of the award; and,
- Work with the appropriate OA/OST offices to determine the handling of any property owned by the Federal government.

All of the above actions may be completed after closeout.

During and after closeout, the OA/OST must:

- Track the recipient's compliance with any continuing accountability requirements and associated reporting to ensure that continued use for the duration specified in the authorizing statute, program regulations, or terms and conditions of the award; and
- If the award included the performance of experimental, developmental, or research work, determine the recipient's intent with respect to any inventions conceived or first actually reduced to practice under the award for research and research-related Federal awards. Utilization report for patents and inventions are required after closeout, as specified in **37 CFR Part 401**, and in the terms and conditions of the award.

6.1.4 Unilateral closeout

The following actions must be taken if an OA/OST elects to close out an award unilaterally:

- Review the financial documents to determine discrepancies;
- Send a letter to the recipient specifying, at a minimum:
 - The OA/OST is unilaterally closing out the award based on non-receipt of acceptable final reports;
 - The Federal funding amount at which the OA/OST will close the award;
 - Any determination of debts, and the amount to be repaid;
 - Any reporting discrepancies which will be treated as disallowed costs; and,
 - The recipient is considered to be non-compliant with the terms and conditions of the award and the OA/OST may consider the use of a remedial action.

Because unilateral closeout may result in an appeal by the recipient or determination of a debt, the OA/OST must develop procedures with their Chief Counsel's Office, and if necessary, the Office of the General Counsel (OGC) for handling unilateral closeouts.

A unilateral closeout letter must be sent to the recipient by means that allows for substantiation of the dates sent by the OA/OST and received by the recipient.

Unilateral closeout is also known as "administrative closeout". This guide uses unilateral closeout because it is more descriptive.

6.1.5 Closeout requirements

The following activities must be completed by the OA/OST, if applicable:

- Receive and review all required necessary reports for completeness, accuracy, and acceptability. If upon review, reports are found to contain material errors, omissions, or are otherwise unacceptable, they must be returned to the recipient for revision with a new due date for submission;
- Review all financial documents for completeness, accuracy and acceptability, make any required funding adjustments and notify the recipient of any amount due;
- Remind recipients of the accountability requirements of program income earned after the completion date as stated in the terms and conditions of the award (**2 CFR § 200.307**). If the terms and conditions affect the disposition of income earned after the end of the

period of performance, the OA/OST must ensure that it has the appropriate means to track recipient compliance with:

- applicable program income alternative,
- the duration of the accountability requirement,
- any associated reporting or recordkeeping, and
- any other accountability requirement for program income earned after the end of the period of performance.
- Collect any amounts determined, either at closeout or later, to be due the Federal government, including costs disallowed in audit report(s) after closeout;
- Communicate with the financial system to ensure that closeout occurs in a timely fashion once the financial documents have been reconciled;
- Respond to a recipient's request for property or equipment disposition instructions, if applicable, consistent with the regulatory timeframe for response (**2 CFR §§ 200.311 - .313; 2 CFR § 1201.313**);
- Provide the appropriate information concerning the recipient to FAPIIS (**2 CFR § 200.339(b)**);
- Document closeout actions in the official award file and retain the file in accordance with OA/OST record management procedures;
- Ensure that any additional requirements after the closeout, such as audits or program income, have been appropriately handled.

6.2 Closeout of Programs

NOTE: This section assumes that the closeout of one or more programs does not constitute the discontinuation of the office's entire portfolio, which may require other actions than are listed here. In this case, coordination with the appropriate DOT and OA/OST offices is essential.

If an entire program is being closed, the OA/OST will coordinate any actions with the appropriate legal counsel, OCFO, and other divisions to ensure the integrity of the effort. The required closeout actions will depend on:

- the rationale for discontinuing the program; and,
- any explicit guidance provided by Congress through appropriations and other legislation, the Office of Management and Budget (OMB) or the Department.

Programs may be closed out for the following reasons:

- the authorizing legislation for the program expires and is not renewed by Congress;
- Congress provides no appropriation for the program, even if the authorizing legislation has not expired;
- the result of a consolidation of programs and related program funding;
- a court ruling requires that the program be discontinued;
- other circumstances, e.g., time-limited programs, such as those under the American Recovery and Reinvestment Act (Recovery Act or ARRA).

Once the program closure(s) and their final dates have been established, the OA/OST will:

- Assess the impact on existing awards, as follows:

- Determine whether existing awards may be allowed to continue until their scheduled completion date, or adjust the completion date to comply with the expiration of the related funding;
- Understand that the OA/OST may be precluded from providing additional funding under existing awards, effectively withholding support at the end of the current budget period;
- For programs, that are time-limited, (e.g., Recovery Act) preclude from providing any additional time or funding for the award;
- Closeout all awards using standard closeout procedures;
- Designate an individual(s) to remain responsible for compliance with continuing accountability requirements; and,
- Evaluate transition costs related to continuation funding.
- Archive, or report the program for closure in the Assistance Listings;
- Notify recipients and provide notices as needed, including updating public and internal agency web sites;
- Provide existing recipients with instructions on managing the awards towards the deadlines for closing the program; and,
- Manage with official award files in the same manner as for any other closed out award.

Part VII: Audits and Reviews

The purpose of an audit is to provide the OA/OST with information about the management of Federal funds awarded to a recipient. Several types of audits are discussed in this section and are summarized in the table at the end of the section. When considering actions such as, new or continuing awards, the OA/OST must determine the availability of the most recent required audit report and review it, as appropriate, for possible effect on the pending and current awards.

Each OA/OST must develop policies and procedures:

- to reasonably assure that all award recipients required to submit audit reports do so in accordance with the OMB guidance;
- for identifying and managing recurring audit findings using a risk-based approach; and,
- to reasonably assure that management decisions contain the required elements and are issued timely in accordance with the OMB guidance.

Government-wide regulations for Single Audits and review requirements are located at **2 CFR Part 200 Subpart F – Audit Requirements**. Government-wide auditing standards and guidance can be found in the Government Accountability Office’s (GAO) Generally Accepted Government Auditing Standards (GAGAS), also known as the Yellow Book (<https://www.gao.gov/yellowbook/overview>).

The OA/OST must clearly specify both the audit requirements (in full text or incorporated by reference) and the potential consequences of not submitting required audit reports in a timely manner, in the terms and conditions of award. Pass-through entities are required to inform their subrecipients of these requirements.

Non-Federal entities, e.g., recipients and subrecipients, must keep accurate financial records and act on any past audit findings (**2 CFR § 200.508**). In addition, non-Federal entities receiving

Federal funds must have internal controls established to ensure compliance with terms and conditions of Federal awards and safeguarding sensitive information (**2 CFR § 200.303**).

The cost of a single audit is an allowable cost within the parameters established under 2 CFR § 200.425. Audit costs are generally covered by the recipient's negotiated indirect cost rate because of the organization-wide nature of the audit (**2 CFR § 200.425**).

The OA/OST must ensure auditees and auditors are aware of and adhere to the requirements outlined in **2 CFR §§ 200.508-.512** (auditees) and **2 CFR §§ 200.514-.520** (auditor) (**2 CFR § 200.513(a)(3) and (b)**).

The OA/OST should work closely with the appropriate offices within their agency and DOT who have responsibilities for audits.

7.1 Audit responsibilities of cognizant agency, oversight agency and Federal awarding agency

Each non-Federal entity expending more than \$50 million a year in Federal awards must have a cognizant agency for audit. The designated cognizant agency for audit must be the Federal awarding agency that provides the predominant amount of direct funding to a non-Federal entity unless OMB designates a specific cognizant agency for audit (**2 CFR §§ 200.513(a)(1) and 2 CFR § 200.18**).

If an auditee does not have a designated cognizant agency for audit, the audit will be under the general oversight of the Federal agency determined in accordance with **2 CFR § 200.73** Oversight agency for audit. A Federal agency with oversight for an auditee may reassign oversight to another Federal agency that agrees to be the oversight agency for audit. Within 30 calendar days after any reassignment, both the old and the new oversight agency for audit must provide notice of the change to the FAC, the auditee, and, if known, the auditor.

All Federal awarding agencies are responsible for ensuring all recipients to whom it makes awards are compliant with the requirements of Subpart F of 2 CFR 200.

7.2 Use of Audit Reports

The OA/OST should review current and previous audit reports prior to awarding a new, continuation, or supplemental award; at least annually as a regular part of monitoring; and at closeout. A pass-through entity must access and review the audits from FAC before awarding any subawards (**2CFR § 200.205(c)(4)**).

7.3 Single Audits

A single audit is an organization-wide audit, in which the auditor samples and tests program and management practices, in accordance with GAGAS and determines whether the auditee has complied with Federal statutes, regulations, and the terms and conditions of Federal awards that may have a direct and material effect on each major program.

The OA/OST must ensure recipients are aware of the single audit requirements that apply to their organization and their responsibilities related to audits of subrecipients (**2 CFR § 200.331(f)**) by

either providing language in their award agreements, or incorporating by reference, the requirements and responsibilities listed in 2 CFR Part 200.

Any recipient or subrecipient that expends \$750,000 or more in Federal awards in its fiscal year must obtain a single audit that meets the requirements of the Single Audit Act (**2 CFR Part 200 Subpart F – Audit Requirements, and Appendix XI to 2 CFR Part 200 – Compliance Supplement**). Organizations that do not reach the single audit threshold in one or more years, must maintain recipient records for possible review by Federal officials or others acting on behalf of the OA/OST.

The Single Audit Act does not apply to contractors, for-profit organizations, foreign organizations, and foreign public entities, and as such:

- For-profit organizations have the option of conducting an audit using the single audit standards or a Federal award-specific audit;
- By written policy, the single audit standards may be applied to foreign entities, as follows:
 - Foreign and international organizations that, in a given fiscal year spend an amount equal to or exceeding the single audit threshold must conduct either a financial-related audit or a single audit;
 - Based on a risk assessment, the OA/OST may specify in the terms and conditions of the award that the OA/OST will conduct any audit deemed necessary;
 - Domestic recipients with foreign components must comply with single audit requirements.

For those recipients or subrecipients not subject to single audit requirements, but who may reach the expenditure threshold in a particular year, the grants official should consult with Delphi and National External Audit Review (NEAR) to determine if an audit is required based on expenditure information and, if so, if it has been submitted to the Federal Audit Clearinghouse (FAC).

7.4 Compliance Supplement

The Compliance Supplement assists auditors in performing the required audits. It is a compendium of programs that have objectives, procedures and compliance requirements that need to be audited because they have a direct and material effect on the success of the program. These requirements are outside of the standard audit requirements. The Compliance Supplement also provides guidance to assist auditors in determining compliance requirements relevant to the audit, audit objectives, and suggested audit procedures for programs not included.

After an agreement to include a program in the Compliance Supplement, the OA/OST is responsible for drafting the program-specific compliance supplements for inclusion in the annual update of the Compliance Supplement.

The program-specific, or program cluster, supplement must be prepared in accordance with OMB guidelines and schedule. The Compliance Supplement Updates are coordinated through OSPE. The OA/OST is responsible for determining the need for changes to program supplements during subsequent updating cycles, justifying changes, as applicable, recommending removal of programs from the Compliance Supplement.

7.5 Program-specific audits

A recipient may elect a program-specific audit (**2 CFR § 200.501(c)**) when:

- The entity's expenditures are under only one Federal program, and
- The Federal program's legislation, regulations, and terms and condition do not require a financial statement audit of the recipient

A recipient expending \$750,000 or more under a single program during its fiscal year can opt for a program-specific audit, however:

- Recipients of Federal research and Development (R&D) programs cannot elect to take this option unless:
 - All Federal awards were from the same Federal agency; or,
 - All Federal awards were from the same Federal agency and the same pass-through entity (for subrecipients); and
 - The Federal agency or pass-through entity approves of a program-specific audit in advance.

7.6 Audit report submission to the Federal Audit Clearinghouse

The FAC is a public database of completed audits and the submission point for the single audit reporting packages. Auditees and auditors are responsible for completing and submitting their portion of the reporting package to FAC (**2 CFR § 200.512**). The OA/OST should periodically review the FAC to ensure that audits are submitted in a timely fashion.

7.6.1 Recipients with delinquent audit reports

If the single audit report has not been submitted by the earlier of thirty (30) calendar days after receipt of the auditor's report(s) or nine (9) months after the end of the auditee's audit period it is considered to be delinquent (**2 CFR §200.512(a)**). For delinquent single audit reports, the OA/OST will determine the appropriate next steps to contact the awardee and instruct them to submit a single audit report covering the delinquent reporting period.

7.7 Single audit management decisions and resolution

The OA/OST must have a designated audit resolution liaison, who has been delegated the authority to sign management decision letters (**2 CFR § 200.521**).

After review of the audit, the OA/OST will issue management decisions on audit findings within six months. The program officials provide documentation of the management decision to the OIG in order for the finding(s) to be resolved and closed (if applicable) in the OIG's Transportation Inspector General Reporting (TIGR) system.

If the audit findings affect programs from more than one agency, the management decisions will be issued by the OIG.

The OA/OST must not delay a management decision letter beyond the six-month time requirement because it has not determined the disallowed amount of an auditor's questioned costs (**2 CFR § 200.521**).

Corrective actions may be completed over a timeframe acceptable to the audit resolution liaison. If the corrective action plan requires modifying a Federal award award(s), that action must be taken by the appropriate grants official.

Subsequent audits may be used to determine if recipients have appropriately implemented corrective actions.

7.7.1 Questioned Costs

The OA/OST must ensure that if all or part of a questioned cost is disallowed, the cost must be reimbursed by the recipient. The responsibility to establish a debt continues even if the audit covers an award(s) that was completed or terminated prior to receiving the audit report.

Determinations of cost allowability and deficiencies in management systems resulting from audit findings must be based on the applicable statute(s), regulations, cost principles, and other terms and conditions of the award.

The basis for the determination of a disallowed amount must be adequately documented. The documentation is important evidence during the resolution of any recipient appeals.

7.8. Other types of audits

The DOT Office of Inspector General (OIG) conducts audits to examine the performance of DOT programs and/or recipients receiving Federal funds and provide independent assessments of DOT programs and operations. The OIG may audit recipients, awards, and programs.

The GAO audits are conducted to provide accountability and determine whether Federal funds are being spent efficiently and effectively, in response to a statutory mandate, or in response to a specific request from the Congress. The GAO audits usually target an issue in a grant program or a Federal awards management function of an OA/OST.

The GAO and OIG often request official government records and documents associated with their audits. The OA/OST must provide auditors and reviewers with the information requested to fulfill its statutory responsibilities in an expeditious manner while respecting operational requirements to protect appropriate information. The OA/OST must coordinate all document production to auditors with their Office of Audit Liaison and Office of Chief Counsel/General Counsel.

An OIG or GAO audit may result in resolution actions to address concerns. The OA/OST must ensure these actions are consistent with law, regulation, and policy; and include written justification containing, when applicable, the legal basis for decisions not agreeing with the audit recommendation.

Prior to an OA/OST planning any additional audits, existing audits must be reviewed. Additional audits must build on, not duplicate, audit work already completed.

Appendix A: Certifications and Representations on SAM.gov for eligibility for Federal Financial Assistance (February 2019)

Source: SAM.gov, Entity Registration

This is the current language from the Entity Registration section of SAM.gov where registrants updating their information, and new registrants must agree to the Certifications and Representations of National and Public Policy Requirements for Financial Assistance. The two sections listed below reflect the attestation for the registrants.

Determine Purpose of Registration

“ . . . As of February 2, 2019, all entities registering for All Awards or Financial Assistance Only, will be required to review the Financial Assistance Certifications and Representations. These are a common set of certifications and representations required by Federal statutes or regulations in accordance with grants guidance under Title 2 of the Code of Federal Regulations. If you [the entity] intend to apply for or are a recipient of a Federal grant or agreement, you must agree to the grant certifications and representations in the Representations & Certifications section of your entity registration. . . ”

Financial Assistance General Certifications and Representations

“As the duly authorized representative of [XXX], I certify that [XXX]:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost when applicable) to ensure proper planning, management and completion of any financial assistance project covered by this Certifications and Representations document (See 2 CFR §113, Mandatory disclosures, 2 CFR §213 Suspension and debarment, OMB Guidance A-129, “Policies for Federal Credit Programs and Non-Tax Receivables”).
2. Will give the awarding agency, the Comptroller 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 will establish a proper accounting system in accordance with the generally accepted accounting standards or agency directives (2 CFR §200.302 Financial Management and 2 CFR §200.303 Internal controls).
3. Will establish safeguards to prohibit employees from using their positions for purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain (See 2 CFR §200.112 Conflict of interest).
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency and provide financial and performance information consistent with program requirements (See 2 CFR §200.301 Performance measurement). Note: This does not apply to awards that support research that use the Research Performance Progress Report.
5. Will comply with Post-Federal Award Requirements related to payments (See 2 CFR §200.305 Payment).
6. Will comply with required financial and compliance audit requirements as applicable (See 2 CFR 200 Subpart F-Audit Requirements).

7. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing financial assistance awards and any financial assistance project covered by the certification document.
8. Will comply with U.S. statutory and public policy requirements, as applicable, including but not limited to:
 - a. National Defense Authorization Act for Fiscal Year 2014, PL 113-66, Division A, Title VIII, subtitle D, section 831;
 - b. Trafficking Victims Protection Act (TVPA) of 2000, as amended 22 U.S.C. 7104(g);
 - c. Drug Free Workplace, 41 U.S.C. 8103;
 - d. Protection from Reprisal of Disclosure of Certain Information, 41 U.S.C. 4712;
 - e. National Environmental Policy Act of 1969, 42 U.S.C. 4321 et seq.;
 - f. 2 CFR Part 25 – Universal Identifier and System for Award Management;
 - g. 2 CFR Part 170 – Reporting Subaward and Executive Compensation;
 - h. 2 CFR Part 180 – OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement);
 - i. Civil False Claims Act, 31 U.S.C. 3730;
 - j. Criminal False Claims Act, 31 U.S.C. 3729, 18 U.S.C. 287 and 1001;
 - k. Program Fraud and Civil Remedies and False Claims Act, 31 U.S.C. 3801 et seq.;
 - l. Lobbying Disclosure Act of 1995, 2 U.S.C. 1601 et seq.;
 - m. Section 543 of P.L. 112-55 and limitations imposed by annual appropriations acts Certification of Tax compliance;
 - n. Section 543 of P.L. 112-55 and limitations imposed by annual appropriations acts Representation regarding corporate felony convictions;
 - o. Section 544 of P.L. 112-55 and limitations imposed by annual appropriations acts Representation regarding unpaid corporate tax liabilities;
 - p. Public Health Service Act of 1912 (§§523 and 527) (42 U.S.C. §§290 dd-3 and 290 ee-3), as amended.
9. Will comply with U.S. statutory and public policy requirements which prohibit discrimination including but not limited to:
 - a. Title VI of the Civil Rights Act of 1964; 42 U.S.C. 2000d et seq.;
 - b. Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601 et seq.;
 - c. Title IX of the Education Amendments of 1972, as amended 20 U.S.C. 1681 et seq.;
 - d. Section 504 of the Rehabilitation Act of 1973, as amended 29 U.S.C. 794;
 - e. Age Discrimination Act of 1975, as amended 42 U.S.C. 6101 et seq.;

- f. Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255);
- g. Comprehensive Alcohol Abuse and Alcoholism Prevention, treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended.

I have read each of the certifications and representations on this page. By submitting this certification, I [XXX], am attesting to the accuracy of the certifications and representations contained herein. I understand that I may be subject to criminal prosecution under Section 1001, Title 18 of the United States Code or civil liability under the False Claims Act if I misrepresent [XXX] by providing false, fictitious, or fraudulent information to the U.S. Government.

Appendix B: Department of Transportation (DoT) Assurances

The following are assurances and certifications for Department of Transportation regulations

Appendix B is currently under review to determine the department-wide certifications and assurances that apply.

Appendix C: Programs Subject to Executive Order 12372 “Intergovernmental Review of Federal Programs” (October 2018)

The following programs are subject to Executive Order 12372 “Intergovernmental Review of Federal Programs” as of October 1, 2018. Annually, during the updates for the Assistance Listings (formerly CFDA), the OA/OST will indicate which programs are included for the review. The list is published annually in the printed version of the CFDA catalog.

- 20.106 Airport Improvement Program
- 20.108 Aviation Research Grants
- 20.109 Air Transportation Centers of Excellence
- 20.205 Highway Planning and Construction
- 20.219 Recreational Trails Program
- 20.224 Federal Lands Access Program
- 20.231 Performance and Registration Information Systems Management
- 20.318 Maglev Project Selection Program
- 20.320 Rail Line Relocation and Improvement
- 20.500 Federal Transit Capital Investment Grants
- 20.505 Metropolitan Transportation Planning and State and Non-Metropolitan Planning and Research
- 20.507 Federal Transit Formula Grants
- 20.509 Formula Grants for Rural Areas
- 20.513 Enhanced Mobility of Seniors and Individuals with Disabilities
- 20.514 Public Transportation Research, Technical Assistance, and Training
- 20.516 Job Access and Reverse Commute Program
- 20.520 Paul S. Sarbanes Transit in the Parks
- 20.523 Capital Assistance Program for Reducing Energy Consumption and Greenhouse Gas Emissions
- 20.526 Bus and Bus Facilities Formula Program
- 20.527 Public Transportation Emergency Relief Program
- 20.529 Bus Testing Facility
- 20.530 Public Transportation Innovation
- 20.531 Technical Assistance and Workforce Development
- 20.600 State and Community Highway Safety

- 20.601 Alcohol Impaired Driving Countermeasures Incentive Grants
- 20.602 Occupant Protection Incentive Grants
- 20.607 Alcohol Open Container Requirements
- 20.608 Minimum Penalties for Repeat Offenders for Driving While Intoxicated
- 20.610 State Traffic Safety Information System Improvement Grants
- 20.611 Incentive Grant program to Prohibit Racial Profiling
- 20.612 incentive Grant Program to Increase Motorcycle Safety
- 20.613 Child Safety and Child Booster Seats Incentive Grants
- 20.615 E-911 Grant Program
- 20.616 National Priority Safety Programs
- 20.700 Pipeline Safety Program State Base Grant
- 20.703 Interagency Hazardous Materials Public Sector Training and Planning Grants
- 20.723 PHMSA Pipeline Safety Research and Development ‘Other Transaction Agreements’
- 20.725 PHMSA Pipeline Safety Underground Natural Gas Storage Grant
- 20.816 America’s Marine Highway Grants
- 20.932 Surface Transportation Discretionary Grants for Capital Investment
- 20.934 Nationally Significant Freight and Highway Projects

The States Point of Contact (SPOC) for Intergovernmental Review of Programs list is compiled regularly by OMB and is posted on its website. The SPOC list is current as of February 7, 2019, and can be found at <https://www.whitehouse.gov/wp-content/uploads/2019/02/SPOC-February-2019.pdf>.