

Interim Guidance Issued December 2016

FINANCIAL ASSISTANCE GUIDANCE MANUAL

U.S. DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY OF TRANSPORTATION
OFFICE OF THE ASSISTANT SECRETARY FOR ADMINISTRATION
OFFICE OF THE SENIOR PROCUREMENT EXECUTIVE



PREFACE

The United States Department of Transportation (DOT) stresses the importance of careful, detailed planning for every award. When an activity is rushed or omitted during any stage of the Federal award lifecycle, significant problems may occur.

I. PURPOSE

The Financial Assistance Guidance Manual (FAGM) provides procedural guidance to be followed by Departmental staff, throughout the lifecycle of financial assistance awards made by DOT, including each operating administration (OA) and secretarial office (SO). The objective of the FAGM is to standardize the process and management for financial assistance awards pursuant to 2 CFR Parts 200 and 1201. Both grant agreements and cooperative agreements are subject to the same regulations and general administrative requirements in 2 CFR Part 200. Both grant agreements and cooperative agreements should be monitored to ensure funds are used properly.

Furthermore, this helps guarantee that financial assistance awards are executed in compliance with applicable laws and regulations. To achieve this goal, the manual includes instructions, policies, guidelines, and other qualifying information.

II. APPLICABILITY

The FAGM applies to grants and cooperative agreements. **The FAGM does NOT apply to Federal procurement contracts, inter-agency agreements, or intra-agency agreements.**

A. RULES OF CONSTRUCTION

When the provisions of a federal statute or regulation differ from the guidelines set forth in the FAGM, the provisions of the Federal statute or regulation prevail over the guidelines in the FAGM.

B. CAVEAT

The FAGM attempts to capture all of the statutes, regulations, and procedures for the applicable financial assistance awards, but it is not a complete guide for every situation. Be mindful. Consult the appropriate parties to ensure compliance with all applicable statutes and regulations.

III. USEFUL INFORMATION

A. VERB USAGE

The verbs used throughout the document are important indicators for compliance with a guideline.

- “Must” is an obligation.
- “Must not” is a prohibition.

- “May” is a discretionary action.
- “Should” is a recommendation.

B. FOOTNOTES

A footnote serves as a reference for the guideline. Generally, this cites the regulation or statute that created the basis of the guideline. See the reference in a footnote for additional information.

A footnote appears at the bottom of a page. A reference in a footnote follows after a superscript number (*e.g.*, ¹, ², ³, ⁴ ...). If a superscript number is placed at the end of a statement, then the footnote only applies to that statement, sentence, etc. If a superscript number is placed at the end of a section header, then the footnote applies broadly to the information in the corresponding section and subsections. Numbers restart with each chapter.

C. TEXT LAYOUT AND LISTS

Bullet points are utilized to indicate a list of information (*e.g.*, Appropriate monitoring activities include:

- Approval of recipient plans prior to award;
- General administrative requirements, such as those included in 2 CFR Part 200; and
- Site visit, performance reporting)

Other than lists, the text under the section header is justified with the left margin.

Also, for purposes of this FAGM, the term “grants” is used to refer to both grants and cooperative agreements unless a specific distinction is expressly made.

TABLE OF CONTENTS

Preface.....	2
I. Purpose.....	2
II. Applicability.....	2
A. Rules of Construction.....	2
B. Caveat.....	2
III. Useful Information.....	2
A. Verb Usage.....	2
B. Footnotes.....	3
C. Text Layout and Lists.....	3
Chapter 1 Awards	10
I. DOT Financial Assistance Funding Types.....	10
A. Discretionary (Competitive).....	10
B. Formula.....	10
C. Loans and Other Credit Assistance.....	10
D. Earmarks, Non-Competitive (I.E., Sole Source)	10
E. Mandatory	11
F. Other Transaction Agreements and other Agreements.....	11
II. Award Instruments.....	12
III. Overview of Financial Assistance Processes	12
A. Discretionary Grant Process.....	12
B. Sample Discretionary Grant Flow Chart.....	14
IV. Selecting the Award Instrument.....	15
A. Identifying Legislative Authority	15
B. Determining The Assistance Instrument.....	16
C. Selecting the Type OF Assistance Agreement.....	17
D. Fixed Amount Awards	20
E. Official Responsible for Selecting Instrument	20
V. Determining the Required Cost Share	21
VI. Information Contained in a Federal Award.....	21
A. General Federal Award Information.....	21
B. General Terms and Conditions.....	22
C. Federal Awarding Agency, Program, or Federal Award Specific Terms and Conditions.....	22
D. Federal Award Performance Goals	22
VII. Award Period of Performance.....	23
A. Start Date.....	23
B. End Date	23
VIII. Additional Funding	24
A. Renewed Funding	24
B. Continued Funding.....	24
C. Supplemental Funding	25

Chapter 2 Pre-Award Activities	26
I. Identifying Legislative Authority	26
II. Selecting the Award Instrument.....	26
III. Determining the Required Cost Share	27
IV. Determining the Extent of Competition	27
A. <i>Documenting the Justification for Other-Than-Full-And-Open Competition (JOTFOC)</i>	27
V. Using the Appropriate CFDA Number.....	28
A. <i>CFDA Information Requirements</i>	29
VI. Requesting Certifications	29
VII. Posting to Grants.gov	29
Chapter 3 Pre-Application Procedures	30
Review and Risk Criteria	30
I. Creating The Merit Review of Proposals.....	30
A. <i>Creating the Evaluation Plan</i>	31
B. <i>Technical Application Review</i>	32
C. <i>Technical Application Evaluation Report Form</i>	32
II. Developing a Framework for Reviewing Risk	32
Chapter 4 Notice of Funding Opportunity	34
I. Summary Information in The Notice of Funding Opportunity	34
II. Timeframe of Availability.....	34
III. Full Text of the Notice of Funding Opportunity	35
A. <i>Program Description – REQUIRED</i>	35
B. <i>Federal Award Information – REQUIRED</i>	36
C. <i>Eligibility Information</i>	36
D. <i>Application and Submission Information</i>	37
E. <i>Application Review Information</i>	40
F. <i>Federal Award Administration Information</i>	42
G. <i>Federal Awarding Agency Contact(s) – REQUIRED</i>	43
H. <i>Other Information (Optional)</i>	43
IV. Standard Application Requirements	43
V. Posting the Notice of Funding Opportunity.....	44
Chapter 5 The Application Review Process	46
TECHNICAL REVIEW.....	46
I. Reviewing Applications.....	46
A. <i>Conducting a Technical Evaluation</i>	46
B. <i>Conducting a Panel Review Meeting</i>	46
C. <i>Program Staff and Senior Level Review/ Selection</i>	47
II. Conflict of Interest.....	47
III. Selecting the Recipient(s)	47
ADMINISTRATIVE REVIEW	48
I. Budget Review	48

Table of Contents

A.	<i>Reviewing the Proposed Budget.....</i>	<i>48</i>
B.	<i>Evaluating Proposed Cost Sharing.....</i>	<i>49</i>
C.	<i>Checking Labor Rates.....</i>	<i>50</i>
D.	<i>Indirect Cost Rates.....</i>	<i>50</i>
II.	Conducting Pre-Award Reviews of Potential Recipients	50
A.	<i>Assessing Risk to Determine Level of Scrutiny.....</i>	<i>50</i>
B.	<i>Checking For Suspension or Debarment.....</i>	<i>51</i>
C.	<i>Checking the Single Audit Clearinghouse Database.....</i>	<i>51</i>
D.	<i>Checking Previous Grant History.....</i>	<i>52</i>
E.	<i>Researching the Applicant.....</i>	<i>53</i>
F.	<i>Federal Tax Lien Delinquency and Felony Conviction check</i>	<i>53</i>
III.	Records to Review.....	54
A.	<i>Financial Management (Accounting) System.....</i>	<i>54</i>
B.	<i>Procurement System</i>	<i>54</i>
C.	<i>Personnel System.....</i>	<i>55</i>
D.	<i>Property Management System.....</i>	<i>55</i>
E.	<i>Travel System</i>	<i>56</i>
F.	<i>Subaward System</i>	<i>56</i>
IV.	Methods of Review.....	59
A.	<i>Financial Management Capability Certifications and Questionnaires.....</i>	<i>59</i>
B.	<i>Desk Reviews.....</i>	<i>59</i>
C.	<i>Site Visits.....</i>	<i>59</i>
V.	Other Areas to Check.....	59
A.	<i>The Terrorist Watch List.....</i>	<i>60</i>
B.	<i>Checking the Disclosure of Lobbying Activities Form (SF LLL).....</i>	<i>60</i>
C.	<i>Drug Free Workplace (49 CFR Part 32).....</i>	<i>60</i>
VI.	Clarifying Information with Applicants.....	62
A.	<i>Clarifying The Budget.....</i>	<i>62</i>
B.	<i>Negotiating Substantial Involvement of the Technical Representative.....</i>	<i>62</i>
VII.	Summary of Discussions.....	63
Chapter 6 Notifying Applicants.....		64
I.	Approvals Required.....	64
II.	Notifying Congress.....	64
III.	Notifying Applicants.....	64
Chapter 7 Post Award Administration		65
I.	Entering Award Data.....	65
II.	Federal Funding Accountability and Transparency Act (FFATA)	65
III.	Catalog of Federal Domestic Assistance (CFDA) Updates.....	66
IV.	Requests for Reimbursement.....	66
V.	Recipient Reporting Requirements.....	70
Chapter 8 Records Management		72
I.	Retention Requirements for Records,.....	72

Table of Contents

A. <i>Indirect Cost Rate Proposals and Cost Allocation Plans: Submission Issues for Negotiations</i>	72
II. Requests for Transfer of Records	72
III. Access To Records	73
IV. Internal Recordkeeping Pertaining to the Award File	73
A. <i>Award Program Management Records</i>	73
B. <i>Pre-Award Files</i>	74
C. <i>Post-Award Files</i>	74
D. <i>Award Products or Deliverables</i>	75
E. <i>Award File Ownership and Retention</i>	76
Chapter 9 Oversight	77
I. Defining Cost Principles	77
II. Project/Recipient Monitoring	77
A. <i>Applying a Risk-Based Approach to Monitoring</i>	77
B. <i>Compliance</i>	78
C. <i>Revision of Budget and program plans</i>	78
D. <i>Site Visits</i>	79
III. Audits and Audit Reports	81
A. <i>The Single Audit</i>	81
B. <i>The Single Audit Clearinghouse Database</i>	81
C. <i>The Audit Reporting Package</i>	82
D. <i>Audit Resolution</i>	83
IV. DOT Audit Responsibilities.....	83
A. <i>The Assistant Secretary for Administration responsibilities are:</i>	85
B. <i>The DOT OIG responsibilities and coordination</i>	85
C. <i>OA/SO audit responsibilities</i>	86
Compliance Measures.....	86
A. <i>Enforcement Measures</i>	86
B. <i>Criteria for Federal program Risk</i>	87
C. <i>Suspension</i>	87
D. <i>Notification of termination requirement</i>	88
E. <i>Withholding Future Awards</i>	88
V. Closeout	88
A. <i>Equipment Disposition</i>	89
B. <i>Real Property Disposition</i>	90
VI. After Closeout.....	90
A. <i>Monitoring The Use of Real Property and Equipment after Closeout</i>	90
B. <i>Reviewing Post-award Audit Reports</i>	91
C. <i>Reporting Fraud, Waste, and Abuse</i>	91
Chapter 10 Other	92
General Provisions	92
A. <i>English Language</i>	92
B. <i>Conflict of Interests</i>	92

Table of Contents

<i>C. Mandatory Disclosures</i>	<i>92</i>
Appendix 1 -- Recent Reports by GAO and OIG on Financial Assistance Programs.....	93

CHAPTER 1 | AWARDS

I. DOT FINANCIAL ASSISTANCE FUNDING TYPES

DOT has various funding types that it may use to provide financial assistance awards to non-Federal entities. Financial assistance awards fall under the following categories:

A. DISCRETIONARY (COMPETITIVE)

DOT awards discretionary funds on the basis of a competitive process. DOT reviews applications, 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, therefore, are most worthy of funding.

B. FORMULA

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.

C. LOANS AND OTHER CREDIT ASSISTANCE

DOT provides credit assistance (e.g., direct loans or loan guarantees) to eligible applicants, which may include state departments of transportation, transit operators, special authorities, local governments and private entities.

D. EARMARKS, NON-COMPETITIVE (I.E., SOLE SOURCE) ¹

Earmarks are grants that are appropriated by Congress prior to a peer review. The term “earmark” is a reference to the Congressional Record where the awards are written into the legislation or committee report specifically with the non-Federal entity’s name, activity and dollar amounts.

¹ See www.grants.gov under “Grant Terminology;” see also, <http://www.grants.gov/web/grants/learn-grants/grant-terminology.html#E>

E. MANDATORY¹

A grant (or cooperative agreement) 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.

F. OTHER TRANSACTION AGREEMENTS AND OTHER AGREEMENTS

Other transactions agreements and other agreements are alternative financial assistance or procurement award instruments specifically authorized by Congress. Other transactions agreements are not bound by all of the same regulations normally followed for contracts, grant agreements, and cooperative agreements. Other transactions agreements are not generally considered a form of financial assistance or contracts, acquisitions or procurements².

The term, "other agreement" is considered as an "other transaction" for Department program purposes. Each OA and SO with "other transaction" authority shall:

1. Develop program-specific guidance to ensure adequate management of other transactions, including:
 - a. Documenting the justification for selection of an "other transaction" agreement.
 - b. Preparing a justification, whenever competition is not the basis for selection of the award. In this case, competition does not require a formal selection process, but some type of competitive procedure should be used.
 - c. Including provisions in the other transaction agreement which provide for sufficient government program oversight to ensure proper expenditure of public funds.
 - d. Consult legal counsel. The use of another transaction does not automatically eliminate the applicability of all procurement or financial assistance laws and regulations. (For example, 2 CFR 180, Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace Grants) may still apply to assistance type "other transactions".)
2. Designate an agreements officer who has authority to approve other transaction agreements, and act as the focal point for amendments or modifications to the agreements. Ensure that the person who executes such agreements has authority to obligate funds on behalf of the government.

² GAO report -16-209: Use of "Other Transaction Agreements Limited and Mostly for Research and Development Activities, published January 7, 2016, see Appendix I page 93.

3. Report obligations made through these agreements in USAspending.gov³ and coded as an “other” type of instrument.

II. AWARD INSTRUMENTS

There are many different types of awards that an OA/SO may use. Awards are classified as either procurement or financial assistance. The following list provides examples of award instruments for each classification:

Inter/Intra Agency Agreements

Procurement

- Contracts - For the purposes of this manual, procurement awards will not be addressed here.

Financial Assistance

- Funding Assistance Agreements
 - Grant Agreements
 - Cooperative Agreements
- Financing Assistance Agreements
 - Loans
 - Loan guarantees
- Other Transaction Agreements

This manual does not cover financial assistance in the form of credit assistance (e.g., direct loans, loan guarantees, and lines of credit).

III. OVERVIEW OF FINANCIAL ASSISTANCE PROCESSES

A. DISCRETIONARY GRANT PROCESS

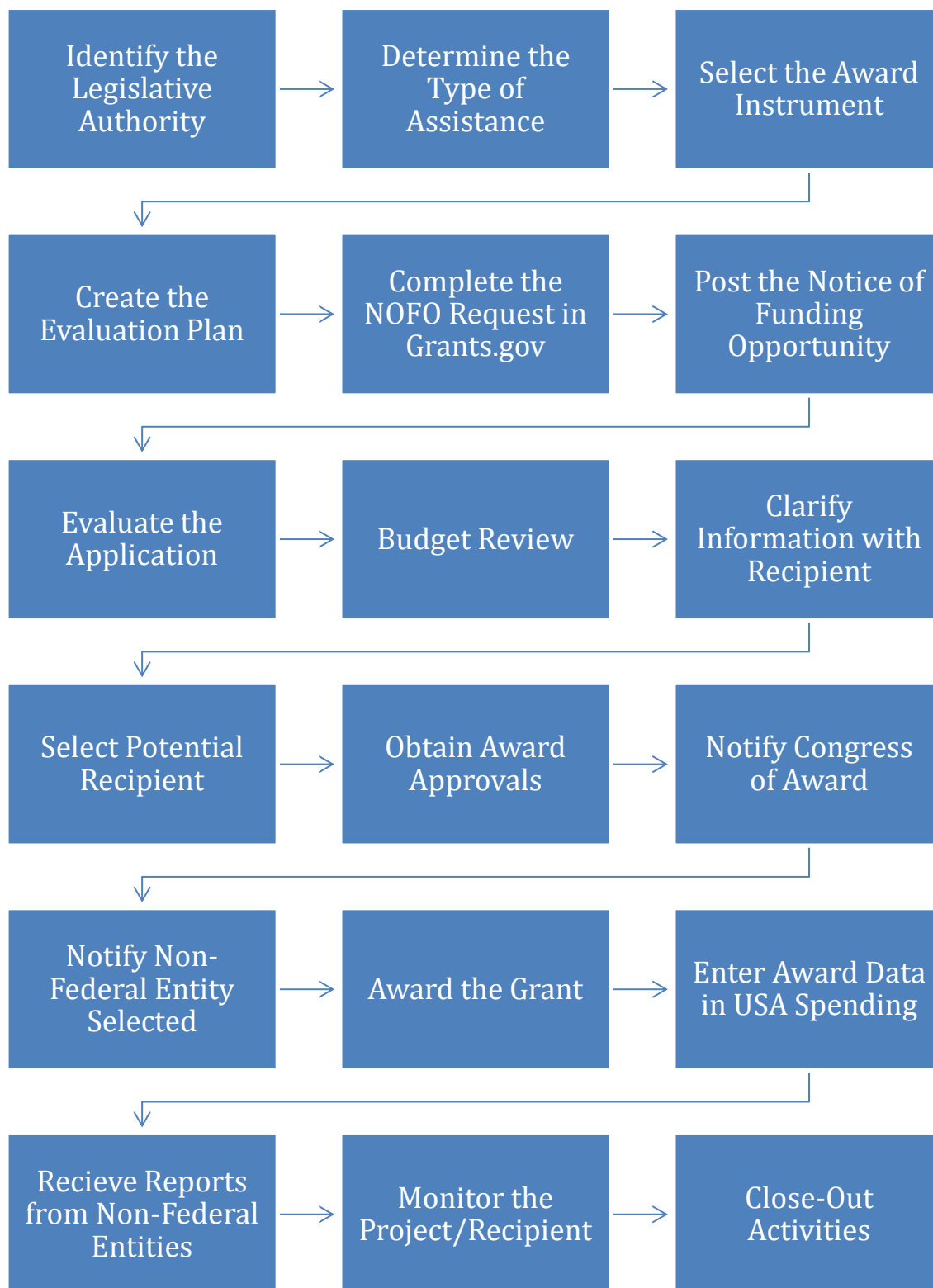
The assistance funding process in DOT generally works as follows, although the order can vary:

- A program office in DOT determines that an assistance award is necessary and selects the appropriate award instrument.
- The program office determines how applications will be evaluated.
- The Notice of Funding Opportunity (NOFO) is developed and must be advertised via Grants.gov.

³ USAspending.gov is the publicly accessible, searchable website mandated by the Federal Funding Accountability and Transparency Act of 2006 to give the American public access to information on the expenditure of federal funds.

- Prospective recipients (e.g. non-Federal entities) apply for the award.
- Applications and certifications are received, screened, and evaluated.
- The non-Federal entity(s) is selected for funding. Negotiations are conducted if necessary.
- The award is made to the non-Federal entity.
- The non-Federal entity conducts the approved project and is monitored by a Federal Agency.
- The award is closed out at the end of the project period.

B. SAMPLE DISCRETIONARY GRANT FLOW CHART



IV. SELECTING THE AWARD INSTRUMENT

Selecting the appropriate award instrument relies on a number of factors. This chapter serves as a guide to ensure the correct award instrument is selected. The OA/SO and/or pass-through entity must decide on the appropriate instrument for the award (i.e., grant agreement, cooperative agreement, or contract) in accordance with the Federal Grant and Cooperative Agreement Act, as amended (31 U.S.C. §6301-6308).⁴ A pass-through entity must decide on the appropriate instrument for any subawards.

A. IDENTIFYING LEGISLATIVE AUTHORITY

Each OA/SO must document the authority for the award instrument. The legislative authority determines the types of instruments that may be used.

The following is an example of general legislative authority:

(a) In General.-The Secretary may undertake, or make grants and contracts for, programs that address human resource needs as they apply to public transportation activities. A program may include-

- (1) an employment training program;
- (2) an outreach program to increase minority and female employment in public transportation activities;
- (3) research on public transportation personnel and training needs; and
- (4) training and assistance for minority business opportunities.

49 U.S.C. §5322(a)

To award assistance instruments, the OA/SO must have statutory authority. This authority may be found in the program legislation or an appropriation act. The recipient, relationship, and effort proposed for award must be consistent with the legislative authority. While the Federal Grant and Cooperative Agreement Act provides a basis for examining whether an arrangement should be a contract, grant, or cooperative agreement, it does not expand the authority to award grants and cooperative agreements.

The following is an example of the legislative authority that may be found in program legislation:

(b) Innovative Public Transportation Workforce Development Program.-

- (1) Program established.-The Secretary shall establish a competitive grant program to assist the development of innovative activities eligible for assistance under subsection (a).
 - (2) Selection of recipients.-To the maximum extent feasible, the Secretary shall select recipients that-
 - (A) are geographically diverse;
 - (B) address the workforce and human resources needs of large public
-

⁴ 2 CFR §200.201 (a)

- transportation providers;
- (C) address the workforce and human resources needs of small public transportation providers;
- (D) address the workforce and human resources needs of urban public transportation providers;
- (E) address the workforce and human resources needs of rural public transportation providers;
- (F) advance training related to maintenance of alternative energy, energy efficiency, or zero emission vehicles and facilities used in public transportation;
- (G) target areas with high rates of unemployment; and
- (H) address current or projected workforce shortages in areas that require technical expertise.

49 U.S.C. §5322(b)

Avoid using a general citation (e.g., by only citing “49 U.S.C. chapter 53”) for the legislative authority. This creates an additional burden when the legislative authority needs to be verified or updated. One of the required fields in the Catalog of Federal Domestic Assistance (CFDA) requests the legislative authority to be cited.

The legislative authority should be checked from time to time to ensure that it has not been amended.

If the legislative authority cites only one award instrument, then that must be the award instrument that is used. However, if multiple options are authorized, then the following information should be used to ensure compliance with the Federal Grant and Cooperative Agreement Act, as amended, and 2 CFR §200.201.

B. DETERMINING THE ASSISTANCE INSTRUMENT

Assistance agreements and procurement contracts differ in several key ways:

- The principal purpose of a procurement contract is to obtain goods or services for the use of, or to directly benefit, the Federal government;
- The principal purpose of an assistance agreement is to further a public purpose;
- Procurement contracts allow for the vendor/supplier to gain a profit;
- Assistance agreements are cost-reimbursable agreements or fixed amount of awards, in which the only permissible charges are actual costs, which are generally paid in advance, indirect costs, which are based on an agreed-upon rate and reimbursement of costs incurred by the awardee;
- Procurement contracts require “deliverables”; and
- Assistance agreements do not include deliverables but may require other submissions described in the award document.

The OA/SO is responsible for determining whether an award should be treated as procurement or financial assistance. This decision and any supporting facts should be documented and included in

the pre-award file. When the legislative authority does not specify the award instrument to be used, two factors affect the selection of the award instrument: the principal purpose and the degree of federal involvement.

1. PRINCIPAL PURPOSE

An **assistance agreement** is the legal instrument used to reflect a relationship between the federal government and a State, local government, or other recipient when the principal purpose is the transfer of money, property, or anything of value to the other party of the agreement to assist in accomplishing a public purpose of support or stimulation authorized by a federal law.⁵

An assistance agreement should be used in situations such as the following:

- Awards to universities to support research studies in subject areas consistent with the mission of the OA/SO;
- Awards to State and local governments for the construction of public works projects or to assist in projects of common interest;
- Fellowships to students for advanced study or research;
- Awards to universities for curriculum development to improve the quality of education in subject areas relevant to the mission of the OA/SO; and
- Awards to eligible recipients to provide support for conferences that have a public benefit but for which the awarding OA/SO does not derive a direct benefit. This would not include conferences to train Federal employees or meetings to obtain advice of non-Federal experts, such as advisory committee meetings.

C. SELECTING THE TYPE OF ASSISTANCE AGREEMENT

Assistance agreements include grants and cooperative agreements. The degree of Federal involvement in the proposed transaction determines the type of assistance agreement that is more appropriate.

1. DEGREE OF FEDERAL INVOLVEMENT

A **grant agreement**⁶ means a legal instrument of financial assistance between a Federal awarding agency or pass-through entity and a non-Federal entity that, consistent with 31 U.S.C. 6302, 6304:

- (a) Is used to enter into a relationship the principal purpose of which is to transfer anything of value from the Federal awarding agency or pass-through entity to the non-Federal entity to carry out a public purpose authorized by a law of the United States (see 31 U.S.C. 6101(3)); and not to acquire property or services for the Federal awarding agency or pass-through entity's direct benefit or use;

⁵ 31 U.S.C. §6304 (1); 31 U.S.C. §6305 (1)

⁶ 2 CFR §200.51

(b) Is distinguished from a cooperative agreement in that it does not provide for substantial involvement between the Federal awarding agency or pass-through entity and the non-Federal entity in carrying out the activity contemplated by the Federal award.

(c) Does not include an agreement that provides only:

- (1) Direct United States Government cash assistance to an individual;
- (2) A subsidy;
- (3) A loan;
- (4) A loan guarantee; or
- (5) Insurance.

A cooperative agreement⁷ means a legal instrument of financial assistance between a Federal awarding agency or pass-through entity and a non-Federal entity that, consistent with 31 U.S.C. 6302-6305:

(a) Is used to enter into a relationship the principal purpose of which is to transfer anything of value from the Federal awarding agency or pass-through entity to the non-Federal entity to carry out a public purpose authorized by a law of the United States (see 31 U.S.C. 6101(3)); and not to acquire property or services for the Federal Government or pass-through entity's direct benefit or use;

(b) Is distinguished from a grant in that it provides for substantial involvement between the Federal awarding agency or pass-through entity and the non-Federal entity in carrying out the activity contemplated by the Federal award.

(c) The term does not include:

- (1) A cooperative research and development agreement as defined in 15 U.S.C. 3710a; or
- (2) An agreement that provides only:
 - (i) Direct United States Government cash assistance to an individual;
 - (ii) A subsidy;
 - (iii) A loan;
 - (iv) A loan guarantee; or
 - (v) Insurance.

⁷ 2 CFR §200.24

2. DEFINING SUBSTANTIAL INVOLVEMENT

In this context described above, substantial involvement refers to *programmatic involvement*.

Involvement considered appropriate for a grant includes:

- Approval of scope, schedule and budgets prior to award;
- General administrative requirements, such as those included in 2 CFR Part 200;
- Site visits, performance reporting, financial reporting, and audits to ensure that the objectives and the terms and conditions of the grant are met;
- Correction of deficiencies in project or financial performance under the terms of the grant;
- General statutory requirements understood in advance of the award such as civil rights, environmental protection, and provisions for people with disabilities;
- Review of performance after completion; and
- Technical assistance or guidance provided (1) at the request of the recipient, or (2) without the requirement for the recipient to follow, or (3) as a requirement for the recipient to follow but understood as a term or condition of the award prior to the initiation of performance.

In addition to the involvement included above for grants, examples of substantial involvement indicating a cooperative agreement include:

- OA/SO and recipient collaboration in the performance of assisted activities;
- Close monitoring or operational involvement by the OA/SO during performance over and beyond the normal exercise of Federal responsibilities to ensure compliance with general statutory and regulatory requirements;
- Ability to redirect project activities; and
- Significant OA/SO involvement in recipient decisions with respect to the scope of services offered and other management processes.

A justification should be prepared for the selection of a cooperative agreement and placed in the pre-award file. When substantial involvement is described in the NOFO, the description should be specific regarding the activities funded under the program, rather than a generic description of monitoring activities.

Both grant agreements and cooperative agreements are subject to the same regulations and general administrative requirements in 2 CFR Part 200. Both grant agreements and cooperative agreements should be monitored to ensure funds are used properly.

D. FIXED AMOUNT AWARDS⁸

One type of grants the OA/SO may use is a fixed amount award to which the following conditions apply:

- Payments are based on meeting specific requirements of the award;
- Accountability is based on performance and results;
- The award amount is negotiated using the cost principles (or other pricing information) as a guide;
- Except in the case of termination before completion of the award, there is no governmental review of the actual costs incurred by the non-Federal entity in the performance of the award; and
- The OA/SO or pass-through entity may use a fixed amount award if the project scope is specific and if adequate cost, historical, or unit pricing data is available to establish a fixed amount award with the assurance that the non-Federal entity will realize no increment above actual cost.

Some ways in which a fixed amount award may be paid include, but are not limited to:

- In several partial payments, the amount of each agreed upon in advance, and the “milestone” or event triggering the payment also agreed upon in advance, and set forth in the award;
- On a unit price basis, for a defined unit or units, at a defined price or prices, agreed to in advance of performance of the award; or
- In one payment at award completion.

A fixed amount award cannot be used in programs that require mandatory cost sharing or match.

- The non-Federal entity must certify in writing to the OA/SO or pass-through entity at the end of the fixed amount award that the project or activity was completed or the level of effort was expended. If the required level of activity or effort was not carried out, the amount of the award must be adjusted.
- Periodic reports may be established for each fixed amount award.
- Changes in principal investigator, project leader, project partner, or scope of effort must receive the prior written approval of the OA/SO or pass-through entity.

E. OFFICIAL RESPONSIBLE FOR SELECTING INSTRUMENT

Each OA/SO should designate officials responsible for making the final determination of the proper award instrument using the criteria discussed above. Program officials may wish to obtain an advance determination from that official so as to avoid expending efforts inappropriately.

⁸ 2 CFR §200.201 (b)

In some cases, awards referenced in legislation or congressional conference reports may be treated as earmark. In earmark situations, OA/SO personnel should consult with the Office of the Chief Counsel for the OA/SO before determining the appropriate award instrument.

V. DETERMINING THE REQUIRED COST SHARE

If cost sharing is required, it will be included in either the program authorizing legislation or the appropriations legislation, although in certain instances, the OA/SO may establish a cost sharing requirement. It may be referred to as “cost sharing” or “matching.”

The following is an example of legislation of required cost share:

49 U.S.C. §5322(c) Government's Share of Costs.-The Government share of the cost of a project carried out using a grant under subsection (a) or (b) shall be 50 percent.

In certain cases, consultation with the OA/SO Office of Chief Counsel may be necessary to determine the proper application of cost sharing requirements. When in doubt, consult with the OA/SO Office of Chief Counsel.

VI. INFORMATION CONTAINED IN A FEDERAL AWARD⁹

This section and all subsections apply to all Federal awards. A Federal award must include the following information:

A. GENERAL FEDERAL AWARD INFORMATION

The OA/SO must include the following general Federal award information in each Federal award:

- Recipient name (which must match the name associated with its unique entity identifier as defined at 2 CFR 200.210);
- Recipient's unique entity identifier;
- Unique Federal Award Identification Number (FAIN);
- Federal Award Date (see §200.39 Federal award date);
- Period of Performance Start and End Date;
- Amount of Federal Funds Obligated by this action;
- Total Amount of Federal Funds Obligated;
- Total Amount of the Federal Award;
- Budget Approved by the OA/SO;
- Total Approved Cost Sharing or Matching, where applicable;
- Federal award project description, (to comply with statutory requirements (e.g., FFATA));
- Name of OA/SO and contact information for awarding official,

⁹ 2 CFR §200.210s

- CFDA Number and Name;
- Identification of whether the award is R&D; and
- Indirect cost rate for the Federal award (including if the de minimis rate is charged per 2 CFR §200.414 Indirect (F&A) costs).

B. GENERAL TERMS AND CONDITIONS

The OA/SO must incorporate the following general terms and conditions either in the Federal award or by reference, as applicable:

- The administrative requirements implemented by the OA/SO as specified in 2 CFR Parts 200 and 1201.
- The national policy requirements. These include statutory, executive order, other Presidential directive, or regulatory requirements that apply by specific reference and are not program-specific. See 2 CFR §200.300 Statutory and national policy requirements.

The Federal award must include wording to incorporate, by reference, the applicable set of general terms and conditions. The reference must be to the website at which the OA/SO maintains the general terms and conditions. The OA /SO must post the general award terms and conditions on the external agency website.

If a non-Federal entity requests a copy of the full text of the general terms and conditions, the OA/SO agency must provide it.

Whenever the general terms and conditions are publicly available, the OA/SO must maintain an archive of previous versions of the general terms and conditions, with start and end dates, for use by the non-Federal entity, auditors, or others.

C. FEDERAL AWARDING AGENCY, PROGRAM, OR FEDERAL AWARD SPECIFIC TERMS AND CONDITIONS

The OA/SO may include with each Federal award any terms and conditions necessary to communicate requirements that are in addition to the requirements outlined in the OA/SO's general terms and conditions. Whenever practicable, these specific terms and conditions also should be shared on a public website and in notices of funding opportunities (as outlined in 2 CFR §200.203 Notices of funding opportunities) in addition to being included in a Federal award.

D. FEDERAL AWARD PERFORMANCE GOALS

The OA/SO must include in the Federal award an indication of the timing and scope of expected performance by the non-Federal entity as related to the outcomes intended to be achieved by the program. In some instances (*e.g.*, discretionary research awards), this may be limited to the requirement to submit technical performance reports (to be evaluated in accordance with OA/SO policy). As appropriate, the Federal award may include specific performance goals, indicators, milestones, or expected outcomes (such as outputs, or services performed or public impacts of any

of these) with an expected timeline for accomplishment. Reporting requirements must be clearly articulated such that, as appropriate, performance during the execution of the Federal award has a standard against which non-Federal entity performance can be measured. The OA/SO may include program-specific requirements, as applicable. These requirements should be aligned with the agency's strategic goals, strategic objectives or performance goals that are relevant to the program. See also Office of Management and Budget (OMB) Circular A-11, Preparation, Submission and Execution of the Budget Part 6 for definitions of strategic objectives and performance goals.

The Federal award must also include any other information required by the OA/SO.

VII. AWARD PERIOD OF PERFORMANCE¹⁰

The period of performance is the time during which the non-Federal entity may incur new obligations to carry out the work authorized under the Federal award. The OA/SO or pass-through entity must include start and end dates of the period of performance in the Federal award. See 2 CFR §200.210 Information contained in a Federal award.

A non-Federal entity may charge to the Federal award only allowable costs incurred during the period of performance and any costs incurred before the Federal award that were authorized by the Federal awarding agency.¹¹ Pre-award costs (i.e. those costs incurred prior to the start date of the Federal award) are allowable only to the extent they would have been allowable if incurred after the date of the Federal award and only with the written approval of the Federal awarding agency.¹²

A. START DATE

The start date of a Federal award is the date specified in the Federal award on or after, which time, expenditures may be charged. If no start date is specified, then the Federal award date is the start date.

The Federal award date is the date when the Federal award is signed by the authorized official of the Federal awarding agency.¹³

Once the award is made, the start date cannot be changed.

B. END DATE

The end date of a Federal award is the date specified in the award after which time expenditures may not be charged against the Federal award except to satisfy obligations to pay allowable project/program costs incurred on or before the end date.

¹⁰ 2 CFR §200.77

¹¹ 2 CFR §200.309

¹² 2 CFR §§200.209 and 200.458

¹³ 2 CFR §200.39

The end date may be changed with prior written approval from the OA/SO. The non-Federal entity may extend the end date for a one-time extension, the entity must notify the Federal awarding agency in writing with the supporting reasons and revised period of performance at least 10 calendar days before the end of the period of performance specified in the Federal award. This one-time extension may not be exercised merely for the purpose of using unobligated balances. If approved, an amendment must be made to the Federal award. 2 CFR §200.308 (d)(2)

If a no-cost extension is needed, then the non-Federal entity should submit a request in writing before the end date of the grant award to the appropriate DOT point of contact (POC).

VIII. ADDITIONAL FUNDING

Additional funding of a project beyond the original period of performance may be provided in the form of renewed support, continued support or supplemental support.

A. RENEWED FUNDING

Renewed funding is for a period subsequent to that provided by a standard Federal award. Renewals to Federal awards, if any, will be in the form of a new award with a new Federal Award Identification Number (FAIN). Costs incurred under the previous Federal award cannot be transferred to the new Federal award. Residual funds remaining in the previous Federal award cannot be transferred to the new Federal award.

B. CONTINUED FUNDING

Funding increments for projects under continuing Federal awards are normally not considered in competition with proposals for new Federal awards or Federal awards with renewed funding, because the additional funding in future amounts/years was indicated at the time of the award.

Unless otherwise provided for in the original award notice, each increment of a continuing Federal award must be funded at the level indicated in the original award notice without the need for a formal request, subject to the judgment of satisfactory progress by the OA/SO, availability of funds, and receipt and approval of the required annual report. DOT makes every attempt to honor continuing Federal award commitments. DOT may reduce continuing grant increments below the levels indicated in original award notices, in order to adjust for changes in the general level of funds for a particular field of science or engineering or to adjust for major new opportunities in that field., This requires full written justification by program staff. Management must review and approve the justification. In the absence of major unanticipated fiscal year constraints, reductions are rare. In order to obtain a committed funding increment and ensure continuity of funding, an annual project report must be satisfactorily submitted.

C. SUPPLEMENTAL FUNDING

In unusual circumstances, small amounts of supplemental funding and support may be requested to assure adequate completion of the original scope of work. Such requests for supplemental funding support should be submitted to DOT's OA/SO Program Officer.

Review of such requests will consider, among other things, whether funding is available. If approved, the DOT Contracts and/or Program Officer will amend the grant to provide additional funding for the current award period. The amendment notice will specify both the amount of supplemental funding and the cumulative amount awarded through the end date. The end date will normally remain unchanged.

CHAPTER 2 | PRE-AWARD ACTIVITIES

When an OA/SO program office determines that it needs to make a Federal award in order to fulfill its mission or a specific piece of legislation, the OA/SO program office should initiate the following processes and consider this information to properly plan and execute the Federal award in accordance with applicable laws and regulations.

I. IDENTIFYING LEGISLATIVE AUTHORITY

The OA/SO program office technical representative should be prepared to present a legal citation documenting the authority for the award instrument. The citation should be specific to the proposed competition or award. This is a rather important step in the award process. It must be documented in the Pre-Award File, but it is also used in numerous forms throughout the award lifecycle. Many forms have a field requesting a citation for the legislative authority.

Example	<i>(1) The Secretary shall make grants to States and Indian tribes to train public sector employees to respond to accidents and incidents involving hazardous material...</i>
Citation	49 U.S.C. 5116 (b)(1)

Avoid using a general citation for the legislative authority. This creates an additional burden when the legislative authority needs to be verified or updated. Whenever a new form requests the legislative authority, the person responsible for filling out the form should check to ensure that the legislative authority is correct and contact the OA/SO program office technical representative if an issue arises.

If the legislative authority cites only one award instrument, such as a grant in the example, then that must be the award instrument that is used. However, if multiple options are authorized, then the definitions for the various award instruments shall be used to determine the appropriate award instrument. See “Chapter 1 | Awards” for more information.

In some cases, awards referenced in congressional conference reports may be treated as mandatory situations, OA/SO personnel should consult with the Office of the Chief Counsel (OCC) for the OA/SO before determining the appropriate award instrument.

II. SELECTING THE AWARD INSTRUMENT

The OA/SO program office determines the award instrument based on legislation. There are various financial assistance award instruments that an OA/SO may use, including grant agreements, cooperative agreements, loans, and other transaction agreements. See Chapter 1 | Awards for additional information.

III. DETERMINING THE REQUIRED COST SHARE

If cost sharing is required by statute, it will be mentioned in either the program authorizing legislation or the appropriations legislation. It may be referred to as “cost sharing” or “matching.”

Example	<i>(i) In general.-As a condition of receiving a grant under this paragraph, a grant recipient shall match 100 percent of the amounts made available under the grant.</i>
Citation	49 U.S.C. 5505 (c)(2)(C)(i)

In certain cases, consultation with the OA/SO Office of Chief Counsel may be necessary to determine the proper application of cost sharing requirements. When in doubt, consult with the OA/SO Office of Chief Counsel.

IV. DETERMINING THE EXTENT OF COMPETITION¹

The Federal Grant and Cooperative Agreement Act encourage maximizing competition in awarding grants or cooperative agreements.¹ Competition must be conducted to select a recipient for grants, other than to a state or local government, unless the decision is made to require states and local governments to compete for certain awards. Competition is not required when sole source is statutorily authorized or meets the criteria listed below²:

- 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.
- 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.
- The amount available for award is not large enough to generate sufficient competition.

A justification shall be prepared whenever competition is not sought, unless the award has been congressionally directed or is made to state or local government. The justification shall include the basis for not competing the award and a rationale for selecting the Recipient. The administrator or designee of the OA/SO must approve the justification and retain the record for the pre-award file.

A. DOCUMENTING THE JUSTIFICATION FOR OTHER-THAN-FULL-AND-OPEN COMPETITION (JOTFOC)

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

¹ 31 U.S.C. §6301 (3)

² 10 U.S.C. §2304(c)(3) or 41 U.S.C. §3304(a)(2)

Whenever 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 list:

- 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.³

V. USING THE APPROPRIATE CFDA NUMBER

The Catalog of Federal Domestic Assistance (CFDA) is a comprehensive listing of all Federal assistance programs. It provides information on program history, eligibility requirements, funding levels, applications procedures, and Federal program points of contact. 2 CFR §200.202 requires Federal agencies to list all Federal assistance programs in the CFDA.⁴ The OA/SO may not award Federal financial assistance without assigning it to a program that has been included in the CFDA.⁵ The catalog describes the information to be provided about each program and requires the agency to periodically update the information.

Each new DOT assistance program requires a CFDA number. A CFDA number cannot be used for two different assistance programs. Check the CFDA website historical index to see the numbers that have previously been applied to Federal assistance programs. Additional CFDA numbers may be established as needed to properly categorize assistance awards. Any new programs established under a new CFDA number must be coordinated with the Office of the Senior Procurement Executive (OSPE). The CFDA point of contact, a staff member in the Financial Assistance Policy and Oversight Division of the OSPE, assigns CFDA numbers after the OA completes a new program application and the number is approved by OMB.

Once a CFDA number is assigned, the General Services Administration (GSA) mandates that the number remains with the program, even if the program migrates to a new OA.

³ Note that 2 CFR §200.306 (a) states, “Under Federal research proposals, voluntary committed cost sharing is not expected. It cannot be used as a factor during the merit review of applications or proposals, but may be considered if it is both in accordance with Federal awarding agency regulations and specified in a notice of funding opportunity.”

⁴ 2 CFR §200.202

⁵ 2 CFR §200.202(a)(3)

A. CFDA INFORMATION REQUIREMENTS⁶

For each program in which awards discretionary Federal awards, non-discretionary Federal awards, loans, insurance, or any other type of Federal financial assistance is authorized; each OA/SO must submit the following information to OMB through the GSA CFDA website:

- The program description, purpose, goals and measurement and brief summary of the statutory or regulatory requirements of the program and its intended outcome. As appropriate, the Program Description, Purpose, Goals, and Measurement should align with the strategic goals and objectives within the OA/SO's performance plan and should support the OA/SO's performance measurement, management, reporting, as required by part 6 of OMB Circular A-11.
- An identification of whether the program makes Federal awards on a discretionary basis or the Federal awards are prescribed by Federal statute, such as in the case of formula grants.
- The projected total amount of funds available for the program. Estimates based on previous year funding are acceptable if current appropriations are not available at the time of the submission.
- The anticipated source of available funds including: the statutory authority for funding the program and, to the extent possible, the agency, or sub-agency, and if known, the specific program unit that will authorize the Federal awards and associated funding identifier.
- The general eligibility requirements, which include: the statutory, regulatory, or other eligibility factors or considerations that determine the applicant's qualification for Federal awards under the program (e.g., type of non-Federal entity).
- The applicability of Single Audit Act Requirements as stated in by 2 CFR Part 200 Subpart F—Audit Requirements.

VI. REQUESTING CERTIFICATIONS⁷

Unless prohibited by Federal statutes or regulations, each OA/SO or pass-through entity is authorized to require the non-Federal entity to submit certifications, assurances, and representations required by Federal statutes or regulations on an annual basis. Submission may be required more frequently if the non-Federal entity fails to meet a requirement of a Federal award.

VII. POSTING TO GRANTS.GOV⁸

Except as noted in 2 CFR §200.211, the OA/SO must announce all competitive grant agreements and cooperative agreements publicly and **publish the required information** on a publicly available OMB-designated government-wide web site (at time of publication, www.grants.gov).

⁶ 2 CFR § 200.202(b)

⁷ 2 CFR § 200.208

⁸ 2 CFR § 200.203

CHAPTER 3 | PRE-APPLICATION PROCEDURES

REVIEW AND RISK CRITERIA

I. CREATING THE MERIT REVIEW OF PROPOSALS¹

For competitive grants or cooperative agreements, unless prohibited by Federal statute, the OA/SO must design and execute a merit review process for applications. This process must be described or incorporated by reference in the NOFO. See “Chapter 4 | Notice of Funding Opportunity” for more information. See also 2 CFR §200.203.

Merit Review²: The term merit review means “a thorough, consistent, and objective examination of applications based on pre-established criteria by persons who are independent of those submitting the applications and who are knowledgeable in the field of endeavor for which support is requested. The review process should be transparent and designed to ensure the highest standards of excellence and impartiality.”

Best Practices for Merit Review

Transparency – Publish the criteria for assessing proposals received in response to the NOFO. In Part 200, the NOFO must list any program policy or other factors or elements, other than merit criteria, that the selecting official may use in selecting applications for Federal award (e.g., geographical dispersion, program balance, or diversity). Based on the program, the level of detail in the NOFO may vary.

Due Diligence and Appropriateness – OAs/SOs should use a merit review process that is appropriate to the type of proposed project and in proportion with the investment and complexity of the work.

Conflict of Interest – Ask all reviewers to declare any conflict of interests when carrying out review activities, so that any conflicts can be identified and managed.

Confidentiality – Treat applications in confidence and do not disclose confidential business information nor disclose the number and name of applicants before the award.

Subject Matter Experts – Use appropriate subject matter experts to assess the individual merit of all applications against the published criteria in the NOFO.

Separation of Duties – Separate the merit review of proposals against the assessment/evaluation criteria from the making of funding decisions. Those acting as reviewers/evaluators should not also be responsible for approving the funding decision.

¹ 2 CFR §200.204

² SSHRC Manual for Adjudication Committee Members 2014-15.

A. CREATING THE EVALUATION PLAN

The merit review process is included in the evaluation plan, which should be prepared prior to the development of the NOFO.³ Depending on the number and types of applications or applicants, the plan or evaluation process may be updated. The plan should contain information relative to the evaluation process to be followed. Examples of items to be included in the evaluation plan include the following:

- Stages of the evaluation process (e.g., Technical Review and Senior Review)
- How oversight will take place to ensure a consistent review of applications (e.g., Quality Control team)
- When key decisions will be documented (e.g., Senior Review team recommendations)

The evaluation plan should also make clear that the stated purpose and policy priorities of the program should align with the evaluation and selection process.

1. OVERVIEW

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.

2. INSTRUCTIONS FOR PANEL MEMBERS

Specific 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 confidentiality rules, 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.

3. REVIEW CRITERIA

Application evaluation criteria must be included as part of the merit review plan so that it 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. These criteria may include, for example, the approach or methodology to be used to meet the objectives of the project, the non-Federal entity's qualifications and resources available for carrying out the project, the

³ 2 CFR § 200.203(c)(5)

applicant's past performance on related projects, and the reasonableness and appropriateness of the proposed scope, schedule and budget.

Additionally, this section must include a description of the rating system to be used in assessing the capability of the applicant to meet these criteria. The reviews should use an adjectival system such as Not Recommended, Recommended, Highly Recommended, etc.

B. TECHNICAL APPLICATION REVIEW

Each application must be objectively reviewed and rated by a panel of relevant officials or peers external to the OA/SO who are technically qualified to assess the subject matter. This technical evaluation must utilize the criteria established in the evaluation plan. The results of the review and rating should serve as the basis for determining the technical acceptability of the application and a recommendation for award.

C. TECHNICAL APPLICATION EVALUATION REPORT FORM

The evaluation plan must include a rating form to reflect the review panel's collective assessment of the application in relation to the review criteria. Each form should include space for comments and a rating for each of the evaluation criteria. As a best practice, other staff should review the comments and ratings for consistency, accuracy and completeness and provide the results of that review to the technical evaluation team to address.

II. DEVELOPING A FRAMEWORK FOR REVIEWING RISK⁴

For competitive grants or cooperative agreements, the OA/SO must have in place a framework for evaluating the risks posed by applicants before they receive Federal awards. This evaluation may incorporate the results of the evaluation of the applicant's eligibility or the quality of its application. If the OA/SO determines that a Federal award will be made, special conditions that correspond to the degree of risk assessed may be applied to the Federal award. Criteria to be evaluated must be described in the announcement of funding opportunity described in the Notice of Funding Opportunity.

In evaluating risks posed by applicants, the OA/SO 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, if it is a prior recipient of Federal awards, including timeliness of compliance with applicable reporting requirements, conformance to the terms and conditions of previous Federal

⁴ 2 CFR §200.205(b);(c);(d)

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—Audit Requirements 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.

OAs /SOs must 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 per Chapter 7.

In addition to this review, the OA/SO 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. 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. OAs/SOs must check SAM.gov and document results before an award.

CHAPTER 4 | NOTICE OF FUNDING OPPORTUNITY

For competitive grants and cooperative agreements, the OA/SO must announce specific funding opportunities by providing certain information in a public notice.¹ This section does not apply to formula grant programs.²

I. SUMMARY INFORMATION IN THE NOTICE OF FUNDING OPPORTUNITY³

The OA/SO must display the following information posted on the OMB-designated government-wide web site (Grants.gov) for finding and applying for OA/SO financial assistance. On grants.gov, the summary information in the NOFO is included in the synopsis section.

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 (whether the funding opportunity is the initial announcement of this funding opportunity or a modification of a previously announced opportunity)
- The funding opportunity number (required, if applicable and if the OA/SO has assigned or will assign a number to the funding opportunity announcement, this number must be provided)
- The Catalog of Federal Financial Assistance (CFDA) number(s)
- Key dates. The key dates include due dates for applications or Executive Order 12372 submissions, as well as for any letters of intent or pre-applications. For any announcement issued before a program's application materials are available, key dates also include the date on which those materials will be released; and any other additional information, as deemed applicable by the relevant OA/SO.
- Any additional information, as deemed applicable by the relevant OA/SO.

II. TIMEFRAME OF AVAILABILITY⁴

The OA/SO must generally make all funding opportunities available for application for at least 60 calendar days. The OA/SO 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/SO head or his or her official designee.

¹ 2 CFR §200.203

² 2 CFR §1201.206

³ 2 CFR §200.203(a)

⁴ 2 CFR §200.203(b)

III. FULL TEXT OF THE NOTICE OF FUNDING OPPORTUNITY⁵

The full text of the NOFO is organized in sections. The required format outlined here indicates immediately following the title of each section whether that section is required in every announcement or is an OA/SO option. The format is designed so that similar types of information will appear in the same sections in announcements of different OA/SO funding opportunities. Toward that end, there is text in each of the following sections to describe the types of information that the OA/SO would include in that section of an actual announcement.

An OA/SO that wishes to include information that the format does not specifically discuss may address that subject in whatever section(s) is most appropriate. For example, if an OA/SO chooses to address performance goals in the announcement, it might do so in the funding opportunity description, the application content, or the reporting requirements.

Similarly, when this format calls for a type of information to be in a particular section, the OA/SO wishing to address that subject in other sections may elect to repeat the information in those sections or use cross references between the sections (there should be hyperlinks for cross-references in any electronic versions of the announcement). For example, an OA/SO may want to include in section “A. Program Description” information about the types of non-Federal entities that are eligible to apply. The format specifies a standard location for that information in section “C.1. Eligible Applicants” but that does not preclude repeating the information in section A or creating a cross reference between sections A and C.1, as long as a potential applicant can find the information quickly and easily from the standard location.

The sections of the full text of the announcement are described in the following provisions and OAs/SOs must follow this format in all Notices of Funding Opportunities:

A. PROGRAM DESCRIPTION – REQUIRED

This section must contain the full program description of the funding opportunity. It may be as long as needed to adequately communicate to potential applicants the areas in which funding may be provided. It describes the funding priorities of the OA/SO or the technical or focus areas in which the OA/SO intends to provide assistance. As appropriate, it may include any program history (*e.g.*, whether this is a new program or a new or changed area of program emphasis). This section may communicate indicators of successful projects (*e.g.*, if the program encourages collaborative efforts) and may include examples of projects that have been funded previously. This section also may include other information the OA/SO deems necessary, and must at a minimum include citations for authorizing statutes and regulations for the funding opportunity.⁶

⁵ Appendix I to 2 CFR Part 200 – Full Text of Notice of Funding Opportunity

⁶ For more information on the authorization, see “Identifying Legislative Authority.”

B. FEDERAL AWARD INFORMATION – REQUIRED

This section must provide sufficient information to help an applicant make an informed decision about whether to submit a proposal. Relevant information could include the total amount of funding that the OA/SO expects to award through the announcement; the anticipated number of Federal awards; the expected amounts of individual Federal awards (which may be a range); the amount of funding per Federal award, on average, experienced in previous years; and the anticipated start dates and periods of performance for new Federal awards. This section also should address whether applications for renewal or supplementation of existing projects are eligible to compete with applications for new Federal awards.

This section also must indicate the type(s) of assistance instrument (*e.g.*, grant, cooperative agreement) that may be awarded if applications are selected for award. If cooperative agreements may be awarded, this section either should describe the “substantial involvement” that the OA/SO expects to have or should reference where the potential applicant can find that information (*e.g.*, in the funding opportunity description in A. Program Description—Required or Federal award administration information in section D. Application and Submission Information). If procurement contracts also may be awarded, this must be stated.

C. ELIGIBILITY INFORMATION

This section addresses the considerations or factors that determine applicant or application eligibility. This includes the eligibility of particular types of applicant organizations, any factors affecting the eligibility of the principal investigator or project director, and any criteria that make particular projects ineligible. The OA/SO should make clear whether an applicant's failure to meet an eligibility criterion by the time of an application deadline will result in the OA/SO returning the application without review or, even though an application may be reviewed, will preclude the OA/SO from making a Federal award. Key elements to be addressed are:

1. ELIGIBLE APPLICANTS – REQUIRED

Announcements must clearly identify the types of entities that are eligible to apply. If there are no legislative restrictions on eligibility, this section may simply indicate that all potential applicants are eligible. If there are restrictions on eligibility, it is important to be clear about the specific types of entities that are eligible, not just the types that are ineligible. For example, if the program is limited to nonprofit organizations subject to 26 U.S.C. §501(c)(3) of the tax code (26 U.S.C. §501(c)(3)), the announcement should say so. Similarly, it is better to state explicitly that Native American tribal organizations are eligible than to assume that an applicant they can unambiguously infer that from a statement that nonprofit organizations may apply. Eligibility also can be expressed by exception, (*e.g.*, open to all types of domestic applicants other than individuals). This section should refer to any portion of Section D. specifying documentation that must be submitted to support an eligibility determination (*e.g.*, proof of 501(c)(3) status as determined by the Internal Revenue Service or an authorizing tribal resolution). To the extent that any funding restriction in

Section D.5 could affect the eligibility of an applicant or project, the announcement must either restate that restriction in this section or provide a cross-reference to its description in Section D.5.

2. COST SHARING OR MATCHING – REQUIRED

Announcements must state whether there is required cost sharing, matching, or cost participation without which an application would be ineligible (if cost sharing is not required, the announcement must explicitly say so). Required cost sharing may be a certain percentage or amount, or may be in the form of contributions of specified items or activities (*e.g.*, provision of equipment). It is important that the announcement be clear about any restrictions on the types of cost (*e.g.*, in-kind contributions) that are acceptable as cost sharing. Cost sharing as an eligibility criterion includes requirements based in statute or regulation, as described in 2 CFR §200.306 Cost sharing or matching of 2 CFR Part 200. This section should refer to the appropriate portion(s) of section D. “Application and Submission Information” stating any pre-award requirements for submission of letters or other documentation to verify commitments to meet cost-sharing requirements if a Federal award is made.

3. OTHER – REQUIRED IF APPLICABLE

If there are other eligibility criteria (*i.e.*, criteria that have the effect of making an application or project ineligible for Federal awards, whether referred to as “responsiveness” criteria, “go-no go” criteria, “threshold” criteria, or in other ways), must be clearly stated and must include a reference to the regulation of requirement that describes the restriction, as applicable. For example, if entities that have been found to be in violation of a particular Federal statute are ineligible, it is important to say so. This section must also state any limit on the number of applications an applicant may submit under the announcement and make clear whether the limitation is on the submitting organization, individual investigator/program director, or both. This section should also address any eligibility criteria for beneficiaries or for program participants other than Federal award recipients.

D. APPLICATION AND SUBMISSION INFORMATION

1. ADDRESS TO REQUEST APPLICATION PACKAGE – REQUIRED

Potential applicants must be told how to get application forms, kits, or other materials needed to apply (if this announcement contains everything needed, this section need only say so). An Internet address where the materials can be accessed is acceptable. However, since high-speed Internet access is not yet universally available for downloading documents, and applicants may have additional accessibility requirements, there also should be a way for potential applicants to request paper copies of materials, such as a U.S. Postal Service mailing address, telephone or FAX number, Telephone Device for the Deaf (TDD), Text Telephone (TTY) number, and/or Federal Information Relay Service (FIRS) number.

2. CONTENT AND FORM OF APPLICATION SUBMISSION – REQUIRED

This section must identify the required content of an application and the forms or formats that an applicant must use to submit it. If any requirements are stated elsewhere because they are general requirements that apply to multiple programs or funding opportunities, this section should refer to where those requirements may be found. This section also should include required forms or formats as part of the announcement or state where the applicant may obtain them.

This section should specifically address content and form or format requirements for:

- Pre-applications, letters of intent, or white papers required or encouraged (see Section D.3), including any limitations on the number of pages or other formatting requirements similar to those for full applications.
- The application as a whole. For all submissions, this would include any limitations on the number of pages, font size and typeface, margins, paper size, number of copies, and sequence or assembly requirements. If electronic submission is permitted or required, this could include special requirements for formatting or signatures.
- Component pieces of the application (*e.g.*, if all copies of the application must bear original signatures on the face page or the program narrative may not exceed 10 pages). This includes any pieces that may be submitted separately by third parties (*e.g.*, references or letters confirming commitments from third parties that will be contributing a portion of any required cost sharing).
- Information that successful applicants must submit after notification of intent to make a Federal award, but prior to a Federal award. This could include evidence of compliance with requirements relating to human subjects or information needed to comply with the National Environmental Policy Act (NEPA) (42 U.S.C. §§4321-4370h).

3. UNIQUE ENTITY IDENTIFIER AND SYSTEM FOR AWARD MANAGEMENT (SAM) – REQUIRED

This paragraph must state clearly that each applicant (unless the applicant is an individual or Federal awarding agency that is exempted from those requirements under 2 CFR §25.110(b) or (c), or has an exception approved by the OA/SO under 2 CFR §25.110(d)) is required to:

- Be registered in SAM before submitting its application;
- Provide a valid unique entity identifier in its application (*e.g.* DUNS Number);
- Continue to maintain an active SAM registration with current information at all times during which it has an active Federal award or an application or plan under consideration by a Federal awarding agency.

It also must state that the OA/SO may not make a Federal award to an applicant until the applicant has complied with all applicable DUNS and SAM requirements and, if an applicant has not fully complied with the requirements by the time the OA/SO is ready to make a Federal award, the OA/SO may determine that the applicant is not qualified to receive a Federal award and use that determination as a basis for making a Federal award to another applicant.

4. SUBMISSION DATES AND TIMES – REQUIRED

Announcements must identify due dates and times for all submissions. This includes not only the full applications but also any preliminary submissions (e.g., letters of intent, white papers, or pre-applications). It also includes any other submissions of information before Federal award that are separate from the full application. If the funding opportunity is a general announcement that is open for a period of time with no specific due dates for applications, this section should say so. Note that the information on dates that is included in this section also must appear with other overview information in a location preceding the full text of the announcement (see 2 CFR §200.203 Notices of funding opportunities.)

Each type of submission should be designated as encouraged or required and, if required, any deadline date (or dates, if the OA/SO plans more than one cycle of application submission, review, and Federal award under the announcement) should be specified. The announcement must state (or provide a reference to another document that states):

- Any deadline in terms of a date and local time. If the due date falls on a Saturday, Sunday, or Federal holiday, the reporting package is due the next business day.
- What the deadline means (e.g., whether it is the date and time by which the OA/SO must receive the application, the date by which the application must be postmarked, or something else) and how that depends, if at all, on the submission method (e.g., mail, electronic, or personal/courier delivery).
- The effect of missing a deadline (e.g., whether late applications are neither reviewed nor considered or are reviewed and considered under some circumstances).
- How the receiving OA/SO office determines whether an application or pre-application has been submitted before the deadline. This includes the form of acceptable proof of mailing or system-generated documentation of receipt date and time.

This section also may indicate whether, when, and in what form the applicant will receive an acknowledgement of receipt. This information should be displayed in ways that will be easy to understand and use. It can be difficult to extract all needed information from narrative paragraphs, even when they are well written. A tabular form for providing a summary of the information may help applicants for some programs and give them what effectively could be a checklist to verify the completeness of their application package before submission.

5. INTERGOVERNMENTAL REVIEW – REQUIRED, IF APPLICABLE

If the funding opportunity is subject to Executive Order 12372, “Intergovernmental Review of Federal Programs,” the notice must say so. In alerting applicants that they must contact their state's Single Point of Contact (SPOC) to find out about and comply with the state's process under Executive Order 12372, it may be useful to inform potential applicants that the names and addresses of the SPOCs are listed in the Office of Management and Budget's Web site. www.whitehouse.gov/omb/grants/spoc.html.

6. FUNDING RESTRICTIONS – REQUIRED

Notices must include information on funding restrictions in order to permit an applicant to develop an application and budget consistent with program requirements. Examples are whether construction is an allowable activity, if there are any limitations on direct costs such as foreign travel or equipment purchases, and if there are any limits on indirect costs (or facilities and administrative costs). Applicants must be advised if Federal awards will not permit reimbursement of pre-Federal award costs.

7. OTHER SUBMISSION REQUIREMENTS – REQUIRED

This section must address any other submission requirements not included in the other paragraphs of this section. This might include the format of the submission, *i.e.*, paper or electronic, for each type of required submission. Applicants should not be required to submit in more than one format and this section should indicate whether they may choose whether to submit applications in hard copy or electronically, may submit only in hard copy, or may submit only electronically.

This section also must indicate where applications (and any pre-applications) must be submitted if sent by postal mail, electronic means, or hand-delivery. For postal mail submission, this must include the name of an office, official, individual or function (e.g., application receipt center) and a complete mailing address. For electronic submission, this must include the URL or email address; whether a password(s) is required; whether particular software or other electronic capabilities are required; and what to do in the event of system problems and a point of contact who will be available in the event the applicant experiences technical difficulties.

Note: With respect to electronic methods for providing information about funding opportunities or accepting applicants' submissions of information, each OA/SO is responsible for compliance with Section 508 of the Rehabilitation Act of 1973 (29 U.S.C. §794d).

E. APPLICATION REVIEW INFORMATION

1. CRITERIA – REQUIRED

This section must address the criteria that the OA/SO will use to evaluate applications. This includes the merit and other review criteria that evaluators will use to judge applications, including any statutory, regulatory, or other preferences (*e.g.*, minority status or Native American tribal preferences) that will be applied in the review process. These criteria are distinct from eligibility criteria that are addressed before an application is accepted for review and any program policy or other factors that are applied during the selection process, after the review process is completed. The intent is to make the application process transparent so applicants can make informed decisions when preparing their applications to maximize the fairness of the process. The announcement should clearly describe all criteria, including any sub-criteria. If criteria vary in importance, the announcement should specify the relative percentages, weights, points, or other means used to distinguish among them. For statutory, regulatory, or other preferences, the

announcement should provide a detailed explanation of those preferences with an explicit indication of their effect (*e.g.*, whether they result in additional points being assigned).

If an applicant's proposed cost sharing will be considered in the review process (as opposed to being an eligibility criterion described in Section C.2), the announcement must specifically address how it will be considered (*e.g.*, to break ties among applications with equivalent ratings after evaluation against all other factors). If cost sharing will not be considered in the evaluation, the announcement should say so, so that there is no ambiguity for potential applicants. Vague statements that cost sharing is encouraged, without clarification as to what that means, are unhelpful to applicants. It also is important that the announcement be clear about any restrictions on the types of cost (*e.g.*, in-kind contributions) that are acceptable as cost sharing.

2. REVIEW AND SELECTION PROCESS – REQUIRED

The announcement must list any program policy or other factors or elements, other than merit criteria, that the selecting official may use in selecting applications for Federal award (*e.g.*, geographical dispersion, program balance, or diversity). This section may vary in the level of detail provided. The OA/SO may also include other appropriate details. For example, this section may indicate who is responsible for evaluation against the merit criteria (*e.g.*, peers external to the OA/SO or OA/SO personnel) and/or who makes the final selections for Federal awards. If there is a multi-phase review process (*e.g.*, an external panel advising internal OA/SO personnel who make final recommendations to the deciding official), the announcement may describe the phases. It also may include:

- The number of people on an evaluation panel and how it operates
- The way reviewers are selected, reviewer qualifications, and
- The way that conflicts of interest are avoided

With respect to electronic methods for providing information about funding opportunities or accepting applicants' submissions of information, each OA/SO is responsible for compliance with Section 508 of the Rehabilitation Act of 1973 (29 U.S.C. §794d).

In addition, if the OA/SO permits applicants to nominate suggested reviewers of their applications or suggest those they feel may be inappropriate due to a conflict of interest, that information should be included in this section.

3. ANTICIPATED ANNOUNCEMENT AND FEDERAL AWARD DATES (OPTIONAL)

At the option of the OA/SO, the OA/SO may include a section on the anticipated announcement and Federal award dates. This section is intended to provide applicants with information they can use for planning purposes. If there is a single application deadline followed by the simultaneous review of all applications, the OA/SO can include in this section information about the anticipated dates for announcing or notifying successful and unsuccessful applicants and for having Federal awards in place. If applications are received and evaluated on a “rolling” basis at different times during an

extended period, it may be appropriate to give applicants an estimate of the time needed to process an application and notify the applicant of the OA/SO's decision.

F. FEDERAL AWARD ADMINISTRATION INFORMATION

1. FEDERAL AWARD NOTICES – REQUIRED

This section must address what a successful applicant can expect to receive following selection. If the OA/SO's practice is to provide a separate notice stating that an application has been selected before it actually makes the Federal award, this section would be the place to indicate that the letter is not an authorization to begin performance (to the extent that it allows charging to Federal awards of pre-award costs at the non-Federal entity's own risk). This section should indicate that the notice of Federal award signed by the grants officer (or equivalent) is the authorizing document, and whether it is provided through postal mail or by electronic means and to whom. It also may address the timing, form, and content of notifications to unsuccessful applicants. See also 2 CFR §200.210 Information contained in a Federal award.

2. ADMINISTRATIVE AND NATIONAL POLICY REQUIREMENTS – REQUIRED

This section must identify the usual administrative and national policy requirements that may be included in the OA/SO's financial assistance awards. Providing this information permits a potential applicant to identify any requirements with which it would have difficulty complying if its application is successful. In those cases, early notification about the requirements allows the potential applicant to decide not to apply or to take needed actions before receiving the Federal award. The announcement need not include all of the terms and conditions of the Federal award, but may refer to a document (with information about how to obtain it) or Internet site where applicants can see the terms and conditions. If this funding opportunity will lead to Federal awards with some special terms and conditions that differ from the OA/SO's usual (sometimes called "general") terms and conditions, this section should highlight those special terms and conditions. Doing so will alert applicants that have received Federal awards from the OA/SO previously and might not otherwise expect different "Terms and Conditions". For the same reason, the announcement should inform potential applicants about special requirements that could apply to particular Federal awards after the review of applications and other information, based on the particular circumstances of the effort to be supported (*e.g.*, if human subjects were to be involved or if some situations may justify special terms on intellectual property, data sharing or security requirements).

3. REPORTING – REQUIRED

This section must include general information about the type (*e.g.*, financial or performance), frequency, and means of submission (paper or electronic) of post-Federal award reporting requirements. Highlight any special reporting requirements for Federal awards under this funding opportunity that differ from what the OA/SO's Federal awards usually require (*e.g.*, by report type, frequency, form/format, or circumstances for use).

G. FEDERAL AWARDING AGENCY CONTACT(S) – REQUIRED

The announcement must give potential applicants a point(s) of contact for answering questions or helping with problems while the funding opportunity is open. The intent of this requirement is to be as helpful as possible to potential applicants, so the OA/SO should consider approaches such as providing:

- The names of points of contact who may be reached in multiple ways (*e.g.*, by telephone, FAX, and/or email, as well as regular mail).
- A fax or email address that multiple people access, so that someone will respond even if others are unexpectedly absent during critical periods.
- Different contacts for distinct kinds of help (*e.g.*, one for questions of programmatic content and a second for administrative questions).

H. OTHER INFORMATION (OPTIONAL)

At the option of the OA/SO, the OA/SO may include a section requesting any additional information that will assist a potential applicant. For example, the section might:

- Indicate whether this is a new program or a one-time initiative.
- Mention related programs or other upcoming or ongoing OA/SO funding opportunities for similar activities.
- Include current Internet addresses for OA/SO websites that may be useful to an applicant in understanding the program.
- Alert applicants to the need to identify proprietary information and inform them about the way the OA/SO will handle it.
- Include certain routine notices to applicants (*e.g.*, that the Federal government is not obligated to make any Federal award as a result of the announcement or that only grants officers can bind the Federal government to the expenditure of funds).

IV. STANDARD APPLICATION REQUIREMENTS⁷

The OA/SO 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/SO may inform applicants and recipients that they do not need to provide certain information otherwise required by the relevant information collection.

⁷ 2 CFR §200.206

V. POSTING THE NOTICE OF FUNDING OPPORTUNITY

Pursuant 2 CFR §200.203, competitive financial assistance grants and cooperative agreements must be announced in a public notice. Therefore, once the NOFO has been approved, it must be posted to Grants.gov. Although the OA/SO 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.

Resources for posting the NOFO and managing applications can be found on Grants.gov under the “GRANTORS” tab.

CHAPTER 5 | THE APPLICATION REVIEW PROCESS

Submitted applications and supporting documents should be downloaded from Grants.gov.

TECHNICAL REVIEW

I. REVIEWING APPLICATIONS

The review must be conducted in accordance with the evaluation criteria and process outlined for the specific program.¹ Depending on the number and types of applications or applicants, the process may be updated. However, the evaluation criteria must not be changed at this point, especially if such criteria were set by statute.

A. CONDUCTING A TECHNICAL EVALUATION

Reviewers of applications must be technically qualified to assess the subject matter. Each technical reviewer must conduct the technical review according to the criteria published in the NOFO. A panel of reviewers may be convened for applications received under a competitive announcement.

B. CONDUCTING A PANEL REVIEW MEETING

The appropriate staff member (e.g., program manager or lead) may assemble a review panel consisting of reviewers who are technically qualified to assess applications responding to the NOFO. Each technical review panel member should be provided with a copy of the merit review plan, the NOFO, and the applications that have been received. Each member must sign the OA/SO conflict of interest statement. Each member must be asked to review and rate each assigned application using the technical evaluation criteria contained in the merit review plan and the NOFO. The member must document his or her rating and the reasons supporting the rating in accordance with the selection criteria in the NOFO.

Depending on the number of applications, the panel may meet and develop consensus ratings. The panel review must consider each competitive application using the merit review criteria in the merit review plan. The primary factors for review must include the requirements and criteria published in the NOFO. The panel must document its rating and the reasons supporting the rating.

The object of a rating structure is to provide advice to senior agency officials and the ultimate decision-maker on the relative merits of each application.

¹ 2 CFR § 200.203(c)(5)

As a best practice, a quality control staff member or team should review the comments and ratings for consistency, accuracy and completeness and provide the results of that review to the technical evaluation team.

C. PROGRAM STAFF AND SENIOR LEVEL REVIEW/ SELECTION

Each application may be reviewed by senior level officials responsible for making recommendation decisions. As necessary, senior level review will consider statutory requirements, programmatic goals, and technical evaluation panel ratings. Senior level officials may make final recommendations for selections utilizing the criteria in the NOFO.

II. CONFLICT OF INTEREST

Per 2 CFR §200.112, the Federal awarding agency must establish conflict of interest policies for Federal awards. The non-Federal entity must disclose in writing any potential conflict of interest to the Federal awarding agency or pass-through entity in accordance with applicable Federal awarding agency policy.

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/SO personnel should consult with legal ethics counsel.

III. SELECTING THE RECIPIENT(S)

Grants and cooperative agreements should be awarded based on the project plan that is most likely to achieve the intended “purpose”. .

Depending on the assistance program, the recipient(s) should be selected based on:

- Conformity with the selection criteria;
- Reference to any funding priorities (such as geographic location);
- Technical merit; and
- The Value of the applicant’s project plan in meeting Government Performance and Results Act (GPRA) goals of DOT².

Selection of all discretionary projects must include an explanation of how the projects were selected based on the funding priorities or criteria in the NOFO. It is recommended that a decision not to fund projects be documented. (Also see Chapter 5 under FAPIIS).

² 2 CFR §200.76

ADMINISTRATIVE REVIEW

This section discusses the procedures and processes that follow the administrative evaluation.

I. BUDGET REVIEW

The following sections discuss the various items that should be checked during the budget review.

A. REVIEWING THE PROPOSED 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 commercial organizations.

Cost principles require that all costs be necessary, allocable, and reasonable to be allowable charges to federal awards. The cost principles list certain costs that are unallowable, allowable and allocable under certain conditions.

In addition to unallowable costs, the cost principles list certain costs that must be approved in advance. Application budget approval may constitute approval of these costs; however, if they are not included in the approved budget and the need for one of these costs arises after award, the recipient must request prior approval.

1. PRIOR WRITTEN APPROVAL³

Under any given Federal award, the reasonableness and allocability of certain items of costs may be difficult to determine. To avoid subsequent disallowance or dispute based on unreasonableness or nonallocability, the non-Federal entity may seek the prior written approval of the cognizant agency for indirect costs or the Federal awarding agency in advance of the incurrence of special or unusual costs. Prior written approval should include the timeframe or scope of the agreement. The absence of prior written approval on any element of cost will not, in itself, affect the reasonableness or allocability of that element, unless prior approval is specifically required for allowability as described under certain circumstances in the following sections of 2 CFR § 200.407:

- §200.201 Use of grant agreements (including fixed amount awards), cooperative agreements, and contracts, paragraph (b)(5);
- §200.306 Cost sharing or matching;
- §200.307 Program income;
- §200.308 Revision of budget and program plans;
- §200.332 Fixed amount subawards;
- §200.413 Direct costs, paragraph (c);
- §200.430 Compensation—personal services, paragraph (h);

³ 2 CFR §200.407

- §200.431 Compensation—fringe benefits;
- §200.438 Entertainment costs;
- §200.439 Equipment and other capital expenditures;
- §200.440 Exchange rates;
- §200.441 Fines, penalties, damages and other settlements;
- §200.442 Fund raising and investment management costs;
- §200.445 Goods or services for personal use;
- §200.447 Insurance and indemnification;
- §200.454 Memberships, subscriptions, and professional activity costs, paragraph (c);
- §200.455 Organization costs;
- §200.456 Participant support costs;
- §200.458 Pre-award costs;
- §200.462 Rearrangement and reconversion costs;
- §200.467 Selling and marketing costs; and
- §200.474 Travel costs.

B. EVALUATING PROPOSED COST SHARING

Cost sharing or matching means the portion of project costs not paid with Federal funds (unless otherwise authorized by Federal statute).⁴

These terms are used interchangeably and refer to either: (1) a statutorily-specified percentage of project/program costs that must be contributed by a grant applicant in order to be eligible for funding; or (2) any situation in which the applicant voluntarily shares in the costs of a project.

Cost sharing by the recipient must⁵:

- Be verifiable from recipient's records;
- Not be utilized as a contribution for any other federally assisted project (unless otherwise authorized by Federal statute);
- Necessary, reasonable, and allowable for the project; and
- Not paid by the federal government under another award (unless authorized by statute).

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.

Also, there are different processes that assist in the documentation of meeting the match requirement. One example is the Tapered Match: a process in which a Recipient provides the required match on a basis other than at a set proportional rate throughout the term of the grant provided the overall Federal share identified in the grant agreement is not exceeded at the close of the grant.

⁴ 2 CFR §200.29

⁵ 2 CFR §200.306

Refer to 2 CFR §200.306 for more information on cost sharing or matching.

C. CHECKING LABOR RATES

For applicants subject to Davis-Bacon regulations, the relevant wage rates can be checked on the wage determination website wdol.gov.

To check the reasonableness of other proposed pay rates under an award, the OA/SO should check a wage survey website, such as the Bureau of Labor Statistics online at: <http://www.bls.gov/bls/blswage.htm> ; <http://www.salary.com/> or other wage survey sources.

D. INDIRECT COST RATES

Indirect (facilities & administrative (F&A)) costs means those costs incurred for a common or joint purpose benefitting more than one cost objective, and not readily assignable to the cost objectives specifically benefitted, without effort disproportionate to the results achieved. To facilitate equitable distribution of indirect expenses to the cost objectives served, it may be necessary to establish a number of pools of indirect (F&A) costs. Indirect (F&A) cost pools must be distributed to benefitted cost objectives on bases that will produce an equitable result in consideration of relative benefits derived. This percentage is called the indirect cost rate and is obtained by several methods as discussed in 2 CFR Appendix III & Appendix IV.

See 2 CFR §200.414 for additional indirect cost guidance.

II. CONDUCTING PRE-AWARD REVIEWS OF POTENTIAL RECIPIENTS

The purpose of pre-award reviews of applicants is to determine if the applicant has the systems in place to properly manage DOT funds and, if not, then the terms and conditions that need to be added to safeguard those funds.

A. ASSESSING RISK TO DETERMINE LEVEL OF SCRUTINY

Information requested and received in response to the NOFO with the application is investigated and confirmed. In addition to the technical review, OAs/SOs will conduct an Administrative review to determine terms and conditions in the award.

Factors to weigh in assessing risk include the:

- Past OA/SO and DOT experience with the applicant;
- Experience of other federal agencies with this applicant (e.g., the Single Audit Clearinghouse Database);
- Recent audit findings (past 3 years);
- Results of any Office of the Inspector General (OIG) or Government Accountability Office (GAO) reviews that covered the applicant;
- Award amount; and

- Factors related to the specific program.

If the risk assessment suggests a problem in a specific area (e.g., financial management), a desk review or pre-award site visit may be appropriate.

B. CHECKING FOR SUSPENSION OR DEBARMENT

All applicants (DOT Order 4200.5F) must be checked against the federal-wide exclusions website managed by SAM at SAM.gov. SAM.gov contains the names of all entities and individuals suspended or debarred from receiving federal funds. The OA/SO should search both the applicant and all key personnel listed in the application. If subrecipients are listed in the application, subrecipients should be searched as well. The results should be printed to document that the applicant and its personnel were not debarred or suspended.

C. CHECKING THE SINGLE AUDIT CLEARINGHOUSE DATABASE

The Federal Audit Clearinghouse (FAC) operates on behalf of the Office of Management and Budget (OMB). Its primary purposes are 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.
- Help auditors and auditees minimize the reporting burden of complying with Circular A-133 audit requirements.

A recipient that expends \$750,000 or more during the recipient's fiscal year in Federal awards must have a single or program-specific audit conducted for that year in accordance with the provisions of 2 CFR § 200 Subpart F – Audit Requirements.⁶

An audit-reporting package includes⁷:

- Financial statements,
- A schedule of expenditure of federal funds,
- Auditor reports,
- A schedule of findings and questioned costs, and
- A corrective action plan, if applicable.

The package must be submitted to the U.S. Census Bureau's Federal Audit Clearinghouse (FAC) via harvester.census.gov/sac/. 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

⁶ 2 CFR §200.501(a)

⁷ 2 CFR § 200.512 (c)

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.

The database originally was developed as a grants managing resource for Federal awarding agencies and was created in cooperation with OMB staff and representatives of more than 20 agencies. Therefore, the standard queries for accessing information in the database are organized to extract the data by federal agency and grant award programs they administer.

When searching the database, it is important to remember that the results link to the information contained in the SF SAC (Single Audit Clearinghouse) database. You can access only the Data Collection Form <http://clinton5.nara.gov/media/pdf/sfsac.pdf>, not the entire reporting package, on the database.

It should be noted that the database contains a limited amount of information excerpted from the complete reporting package. Therefore, awarding agencies that have questions about anything they see on the Data Collection Form should request a complete reporting package. They should review the entire package before making any final decisions concerning an applicant.

D. CHECKING PREVIOUS GRANT HISTORY

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 grants and contracts. This system, currently designated as the Federal Awardee Performance and Integrity Information System (FAPIIS), integrates various sources of information on the eligibility of organizations for Federal government awards and is currently available at <https://www.fapiis.gov>.

Effective January 1, 2016, OMB has instructed agencies to include reviewing and reporting to FAPIIS as part of the Grants and Cooperative Agreement process. The following sections in 2 CFR 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 grant applicant has been determined to be “not qualified” for a Federal award.
- 2 CFR §200.213 contains information regarding suspension and debarment which was previously found at 2 CFR §200.212.
- 2 CFR §200.339 and 2 CFR §200.340 requires 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.

The new requirements are not applicable to pass-through entities. However, since FAPIIS is publically available, pass-through entities may want to review the system before making a subaward.

E. RESEARCHING THE APPLICANT

Applicants selected for award should be checked against the federal-wide exclusions website. However, below are additional steps that may be used to research an applicant’s history:

- 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.

F. FEDERAL TAX LIEN DELINQUENCY AND FELONY CONVICTION CHECK

In FY2014, under DOT appropriation PL 113-136 Sec. 414-416, the House committee included a provision limiting the use of funds to enter into a contract, memorandum of understanding, or cooperative agreement with, make a grant to, or provide a loan or loan guarantee to, corporations convicted of a felony criminal violation of Federal law within the preceding 24 months as well as corporations with certain unpaid Federal tax liabilities. The House committee has continued to add this language in subsequent appropriations.

As of FY2014, all OAs and Secretarial Offices must have a process in place to implement these requirements by ensuring that the following steps occur in the procurement and non-procurement processes:

Referral process: When a corporation or recipient provides an affirmative response to the certifications regarding tax delinquency or felony conviction as provided below, the Contracting Officer for a procurement transaction or the Authorizing Official (AO) for a non-procurement transaction shall-

- Promptly, upon receipt of notice, request such additional information from the corporation as the Contracting Officer or AO deems necessary to demonstrate the corporation's or recipient's responsibility to the Contracting Officer or Authorizing Official;
- Notify, in accordance with agency procedures, the agency's Suspending and Debarring Official; and
- Not award to the corporation or recipient unless an agency Suspending and Debarring Official has considered suspension or debarment, and made a determination that suspension or debarment on this tax delinquency or felony basis is not necessary to protect the interests of the Government. For acquisitions conducted under the Federal Aviation Administration's (FAA's) Acquisition Management System (AMS), the Contracting Officer must follow AMS' procedures prior to making an award.

III. RECORDS TO REVIEW

The following sources may be used to review non-Federal entities records and capabilities. As provided by 2 CFR §200.336 each OA/SO has the right to access non-Federal entity records and personnel.

A. FINANCIAL MANAGEMENT (ACCOUNTING) SYSTEM⁸

Each state must expend and account for the Federal award in accordance with its state laws and procedures for expending and accounting for the state's own funds. In addition, the state's and each non-Federal entity's financial management systems, including records documenting compliance with Federal statutes, regulations, and the terms and conditions of the Federal award, must be sufficient to permit the preparation of reports required by general and program-specific terms and conditions; and the tracing of funds to a level of expenditures adequate to establish that such funds have been used according to the Federal statutes, regulations, and the terms and conditions of the Federal award.

The financial management system of each non-Federal entity must provide for the provisions set forth at 2 CFR §200.302(b). These provisions may serve as a checklist that should be used during site visits and desk reviews.

B. PROCUREMENT SYSTEM⁹

When procuring property and services under a Federal award, a state must follow the same policies and procedures it uses for procurements using from its non-Federal funds. The state will comply with 2 CFR §200.322 Procurement of recovered materials and ensure that every purchase order or

⁸ 2 CFR §200.302

⁹ 2 CFR §200.317

other contract includes any clauses required by 2 CFR §200.326 Contract provisions. Subrecipients of States shall follow State allowed policies and procedures.¹⁰

All other non-Federal entities, must follow 2 CFR §§200.318 through 200.326. Also, all non-Federal entities, including states, must comply with federal laws and regulations and should follow Federal agency guidance.

C. PERSONNEL SYSTEM

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.

D. PROPERTY MANAGEMENT SYSTEM¹¹

Property types include real property, equipment, supplies, and intangible property.

The non-Federal entity must, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired or improved with Federal funds as provided to property owned by the non-Federal entity. Federally owned property need not be insured unless required by the terms and conditions of the Federal award.¹²

Real property, equipment, and intangible property that are acquired or improved with a Federal award must be used for the program or project for which it was acquired as long as needed for that purpose.¹³ Title to such property vests upon the acquisition in the non-Federal entity,¹⁴ and the use, management, and disposal of such property must be in accordance with 2 CFR §§ 200.311, 200.313, 200.315 and 2 CFR §1201.313 Equipment.

¹⁰ 2 CFR §1201.317

¹¹ 2 CFR §§200.310 – 200.316

¹² 2 CFR §200.310

¹³ 2 CFR §200.311(b)

¹⁴ 2 CFR §200.311(a)

For more information on property standards refer to 2 CFR §§200.310 through 200.316.

E. TRAVEL SYSTEM¹⁵

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).

F. SUBAWARD SYSTEM¹⁶

If the non-Federal entity is a pass-through entity, then it must meet 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 an award to another party does not relieve the Recipient's responsibility for overseeing and administering the subaward. ¹⁷The OA/SO shall ensure that the pass-through entity is following its responsibilities.

Per 2 CFR §200.331, all pass-through entities must:

- (a) Ensure that every subaward is clearly identified to the subrecipient as a subaward and includes the following information at the time of the subaward and if any of these data elements change, include the changes in subsequent subaward modification. When some of this information is not available, the pass-through entity must provide the best information available to describe the Federal award and subaward. Required information includes:
 - (1) Federal Award Identification:
 - (i) Subrecipient name (which must match registered name in DUNS);

¹⁵ 2 CFR §200.474

¹⁶ 2 CFR §200.331

¹⁷ 2 CFR §1201.330

- (ii) Subrecipient's DUNS number (see §200.32 Data Universal Numbering System (DUNS) *number*);
 - (iii) Federal Award Identification Number (FAIN);
 - (iv) Federal Award Date (see §200.39 Federal award date);
 - (v) Subaward Period of Performance Start and End Date;
 - (vi) Amount of Federal Funds Obligated by this action;
 - (vii) Total Amount of Federal Funds Obligated to the subrecipient;
 - (viii) Total Amount of the Federal Award;
 - (ix) Federal award project description, as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA);
 - (x) Name of the OA/SO, pass-through entity, and contact information for awarding official,
 - (xi) CFDA Number and Name; the pass-through entity must identify the dollar amount made available under each OA/SO and the CFDA number at time of disbursement;
 - (xii) Identification of whether the award is R&D; and
 - (xiii) Indirect cost rate for the Federal award (including if the de minimis rate is charged per 2 CFR §200.414 Indirect (F&A) costs).
- (2) All requirements imposed by the pass-through entity on the subrecipient so that the Federal award is used in accordance with Federal statutes, regulations and the terms and conditions of the Federal award.
- (3) Any additional requirements that the pass-through entity imposes on the subrecipient in order for the pass-through entity to meet its own responsibility to the OA/SO including identification of any required financial and performance reports;
- (4) An approved federally recognized indirect cost rate negotiated between the subrecipient and the Federal government or, if no such rate exists, either a rate negotiated between the pass-through entity and the subrecipient (in compliance with this part), or a de minimis indirect cost rate as defined in §200.414 Indirect (F&A) costs, paragraph (b) of this part.
- (5) A requirement that the subrecipient permit the pass-through entity and auditors to have access to the subrecipient's records and financial statements as necessary for the pass-through entity to meet the requirements of this section, 2 CFR §200.300 Statutory and national policy requirements through 2 CFR §200.309 Period of performance, and Subpart F—Audit Requirements of 2 CFR Part 200; and
- (6) Appropriate terms and conditions concerning closeout of the subaward.
- (b) Evaluate each subrecipient's risk of noncompliance with Federal statutes, regulations, and the terms and conditions of the subaward for purposes of determining the appropriate subrecipient monitoring described in paragraph (e) of this section, which may include consideration of such factors as:
 - (1) The subrecipient's prior experience with the same or similar subawards;

- (2) The results of previous audits including whether or not the subrecipient receives a Single Audit in accordance with Subpart F—Audit Requirements of this part, and the extent to which the same or similar subaward has been audited as a major program;
 - (3) Whether the subrecipient has new personnel or new or substantially changed systems; and
 - (4) The extent and results of OA/SO agency monitoring (e.g., if the subrecipient also receives Federal awards directly from an OA/SO agency).
- (c) Consider imposing specific subaward conditions upon a subrecipient if appropriate as described in 2 CFR §200.207 Specific conditions.
- (d) Monitor the activities of the subrecipient as necessary to ensure that the subaward is used for authorized purposes, in compliance with Federal statutes, regulations, and the terms and conditions of the subaward; and that subaward performance goals are achieved. Pass-through entity monitoring of the subrecipient must include:
 - (1) Reviewing financial and programmatic reports required by the pass-through entity.
 - (2) Following-up and ensuring that the subrecipient takes timely and appropriate action on all deficiencies pertaining to the Federal award provided to the subrecipient from the pass-through entity detected through audits, on-site reviews, and other means.
 - (3) Issuing a management decision for audit findings pertaining to the Federal award provided to the subrecipient from the pass-through entity as required by 2 CFR §200.521 Management decision.
- (e) Depending upon the pass-through entity's assessment of risk posed by the subrecipient (as described in paragraph (b) of this section), the following monitoring tools may be useful for the pass-through entity to ensure proper accountability and compliance with program requirements and achievement of performance goals:
 - (1) Providing subrecipients with training and technical assistance on program-related matters; and
 - (2) Performing on-site reviews of the subrecipient's program operations;
 - (3) Arranging for agreed-upon-procedures engagements as described in §200.425 Audit services.
- (f) Verify that every subrecipient is audited as required by 2 CFR 200 Subpart F—Audit Requirements of this part when it is expected that the subrecipient's Federal awards expended during the respective fiscal year equaled or exceeded the threshold set forth in 2 CFR §200.501 Audit requirements.
- (g) Consider whether the results of the subrecipient's audits, on-site reviews, or other monitoring indicate conditions that necessitate adjustments to the pass-through entity's own records.
- (h) Consider taking enforcement action against noncompliant subrecipients as described in 2 CFR §200.338 Remedies for noncompliance of this part and in program regulations.

IV. METHODS OF REVIEW

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

A. FINANCIAL MANAGEMENT CAPABILITY CERTIFICATIONS AND QUESTIONNAIRES

Requiring applicants to submit a certification of financial management capabilities, also known as a financial management capability questionnaire, is an approach taken by several Federal agencies, including the Federal Mediation and Conciliation Service (FMCS) and the National Science Foundation (NSF). These forms survey the applicant's accounting system and financial status.

FMCS requires some applicants to submit the questionnaire and ensure its certification by an independent public accountant. NSF requires a financial management capability questionnaire be submitted by all applicants that have not received NSF funding within the previous two years; no independent accountant certification is required.

B. DESK REVIEWS

A desk review involves requesting documentation from the non-Federal entity and reviewing it for compliance with federal and DOT requirements. Refer to the section "Records to Review" for information on what to consider during a desk review.

C. SITE VISITS

Pre-award site visits may be justified for a very high-dollar award to an applicant new to Federal grants to ensure Federal funds will be managed properly. Also there are additional circumstances that might justify a pre-award site visit (e.g., a non-Federal entity that has an A-133 Audit report that indicates the entity is high risk).

V. OTHER AREAS TO CHECK

Prior to making a Federal award, the OA/SO is required by 31 U.S.C. §3321 and 41 U.S.C. §2313 note to review information available through any OMB-designated repositories of government-wide eligibility qualification or financial integrity information, such as SAM.gov, Federal Awardee Performance and Integrity Information System (FAPIIS), and "Do Not Pay". See also suspension and debarment requirements at 2 CFR Part 180 and DOT's suspension and debarment regulations at 2 CFR Part 1200. For private nongovernment sources, OAs can purchase information from Dun and Bradstreet.

The following sections address additional checks that may be accessed prior to award.

A. 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.

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

B. CHECKING THE DISCLOSURE OF LOBBYING ACTIVITIES FORM (SF LLL)

All lobbying disclosure forms (SF LLL) submitted should be retained in the corresponding post-award file.

Lobbying certifications and disclosures are submitted to ensure that the OA/SO and the non-Federal entity are aware of the lobbying restrictions. Then, the OA/SO and the non-Federal entity must take actions to avoid violating applicable regulations and statutes.

Lobbying with respect to certain grants, contracts, cooperative agreements, and loans is governed by relevant statutes, including among others, the provisions of 31 U.S.C. §1352, as well as the common rule, "New Restrictions on Lobbying," 49 CFR Part 20, including definitions, and the Office of Management and Budget "Government-wide Guidance for New Restrictions on Lobbying" and notices published at 54 FR 52306 (December 20, 1989), 55 FR 24540 (June 15, 1990), 57 FR 1772 (January 15, 1992), and 61 FR 1412 (January 19, 1996).¹⁸

If a non-Federal entity discloses lobbying activities, OA/SO staff should be aware of this when conducting a site visit. Therefore, the proper segregation of funds can be confirmed. 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.

C. DRUG FREE WORKPLACE (49 CFR PART 32)

This part carries out the portion of the Drug-Free Workplace Act of 1988, (41 U.S.C. §801 *et seq.*, as amended,) that applies to grants. It also applies the provisions of the Act to cooperative agreements and other financial assistance awards, as a matter of Federal Government policy.

The following requirements should be followed when meeting Drug Free Workplace requirements:

(a) In General.—

- (1) Persons other than individuals — A person other than an individual shall not receive a grant from a Federal agency unless the person agrees to provide a drug-free workplace by—

¹⁸ 2 CFR §200.450

- (A) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violations of the prohibition;
 - (B) Establishing a drug-free awareness program to inform employees about—
 - (i) The dangers of drug abuse in the workplace;
 - (ii) The grantee's policy of maintaining a drug-free workplace;
 - (iii) Available drug counseling, rehabilitation, and employee assistance programs; and
 - (iv) The penalties that may be imposed on employees for drug abuse violations;
 - (C) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by subparagraph (A);
 - (D) Notifying the employee in the statement required by subparagraph (A) that as a condition of employment in connection with the grant the employee will—
 - (i) abide by the terms of the statement; and
 - (ii) notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than 5 days after the conviction;
 - (E) Notifying the granting agency within 10 days after receiving notice under subparagraph (D)(ii) from an employee or otherwise receiving actual notice of a conviction;
 - (F) Imposing a sanction on, or requiring the satisfactory participation in a drug abuse assistance or rehabilitation program by, any employee who is convicted, as required by 41 U.S.C. § [8104](#); and
 - (G) making a good faith effort to continue to maintain a drug-free workplace through implementation of subparagraphs (A) to (F).
- (2) Individuals — A Federal agency shall not make a grant to an individual unless the individual agrees not to engage in the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance in conducting an activity in connection with the grant.
- (b) Suspension, Termination, or Debarment of the Grantee—
- (1) Grounds for suspension, termination, or debarment— Payment under a grant awarded by a Federal agency may be suspended and the grant may be terminated, and the grantee may be suspended or debarred, in accordance with the requirements of this section, if the head of the agency or the official designee of the head of the agency determines in writing that—
 - (A) the grantee is violating, or has violated, the requirements of subparagraph (A), (B), (C), (D), (E), (F), or (G) of subsection (a)(1); or
 - (B) the number of employees of the grantee who have been convicted of violations of criminal drug statutes for violations occurring in the workplace

indicates that the grantee has failed to make a good faith effort to provide a drug-free workplace as required by subsection (a)(1).

- (2) Conduct of suspension, termination, and debarment proceedings.— A suspension of payments, termination, or suspension or debarment proceeding subject to this subsection shall be conducted in accordance with applicable law, including Executive Order 12549 or any superseding executive order and any regulations prescribed to implement the law or executive order.
- (3) Effect of debarment.— A grantee debarred by a final decision under this subsection is ineligible for award of a grant by a Federal agency, and for participation in a future grant by a Federal agency, for a period specified in the decision, not to exceed 5 years.

VI. CLARIFYING INFORMATION WITH APPLICANTS

Discussions with selected applicants should include:

- Reviewing scope and schedules;
- Compliance with applicable cost principles (not negotiable);
- Realism and reasonableness of the proposed costs;
- Reviewing and confirming the proposed cost sharing; and
- Financial administration details.

A. CLARIFYING THE BUDGET

If the budget review noted areas in which the applicant had incorrectly estimated certain costs, then it is appropriate to identify the areas that seem unrealistic and request the applicant to revise the budget accordingly.

The budget review may identify necessary changes to the proposed cost sharing. If this is the case, then the applicant should revise the budget to reflect changes in cost sharing.

B. NEGOTIATING SUBSTANTIAL INVOLVEMENT OF THE TECHNICAL REPRESENTATIVE

Under a cooperative agreement, the technical representative or another representative of the program office is expected to participate in substantial programmatic involvement during the project. If either the OA/SO or the non-Federal entity has questions about the substantial involvement, then the negotiation is one example of an appropriate time to resolve those differences and clarify information for both sides. The OA/SO should not wait until the kickoff meeting to discuss these questions because it could jeopardize the award or make immediate amendments necessary.

VII. SUMMARY OF DISCUSSIONS

The results of discussions should be documented by the OA/SO program representatives and the applicant's representative(s).

CHAPTER 6 | NOTIFYING APPLICANTS

I. APPROVALS REQUIRED

Once the awards documents have been prepared, they must be approved by an official authorized to approve that level of funding. Check specific guidance from the OA/SO on grant approvals.

II. NOTIFYING CONGRESS

Various OA's provisions may require specific prior notification to be made to Congressional Committees prior to announcing a grant award. Other provisions requiring notice to Congress may be found in annual appropriations acts.

The Office of the Secretary of Transportation (OST) has developed an automated, web-based system for notifying Congress of impending grant awards by DOT. This replaced the manual system previously used. This system is called the Grants Notification System (GNS). Historically, congressional appropriating committees have included language in appropriations statutes requiring DOT to provide advance notification to the appropriation committees of certain grant selections, 3 business days before the congressional delegations of each state or the grant recipients are notified.

III. NOTIFYING APPLICANTS

For successful applicants, the award document should be transmitted to the recipient along with an accompanying correspondence explaining the administrative aspects of the award. The Federal award document should include information listed in 2 CFR §200.210.

For unsuccessful applicants, the OA/SO must notify those applicants that their application was not successful and if requested provide those applicants with an opportunity for a post-selection discussion regarding the decision and review of the application.

CHAPTER 7 | POST AWARD ADMINISTRATION

I. ENTERING AWARD DATA

Each OA/SO and/or program office is responsible for reporting financial assistance (grants, cooperative agreements, loans, and other types of financial assistance) data directly to USAspending.gov on a monthly basis. USAspending.gov data submissions must occur by the 5th of each month. Monthly submissions include financial assistance awards for the previous month. For example, for the month of September, data submissions must include all financial assistance award obligations that occurred in the previous month, which would be August. The OA/SO is responsible for ensuring that all reported financial assistance award data is accurate, current, and complete. The OA/SO is responsible for ensuring that all award data reported to USAspending.gov is reconciled on a quarterly basis with financial data reported to Delphi, the Department's financial system. The OA/SO is responsible for providing oversight to ensure its reporting users adhere to Departmental procedures. The OA/SO Reporting Lead(s) will immediately notify the OSPE of any change to the approved list of OA/SO users authorized to report directly to USAspending.gov.

Data uploads to USAspending.gov are accomplished with a specifically formatted file. Users must be trained, authorized by the OSPE, and registered to upload into usaspending.gov. The upload file name must be consistent with Departmental guidelines. Each OA/SO must report all awards to USAspending.gov.

II. FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT (FFATA)

The Federal Funding Accountability and Transparency Act of 2006 & 2009 (FFATA) require the full disclosure of all entities or organizations receiving federal funds. FFATA requires the creation of searchable websites, currently at USAspending.gov and the Federal Subaward Reporting System (FSRS.gov) that allows the public, at no cost, to:

- Search Federal funding by any element required by FFATA reporting;
- Ascertain through a single search the total amount of *Federal funding awarded* to an entity, by fiscal year; and
- Download data included in the results of the searches.

Federal funding awarded:

- Includes Federal financial assistance and expenditures such as grants, contracts, sub-grants, subcontracts, loans, awards, cooperative agreements, purchase orders, task orders, delivery orders, and other forms of financial assistance;
- Does not include individual transactions below \$25,000; and
- Before October 1, 2008, does not include credit card transactions.

III. CATALOG OF FEDERAL DOMESTIC ASSISTANCE (CFDA) UPDATES

Executive departments and agencies are required to annually provide updated information on existing and new programs in accordance with Public Law 98-169 and OMB Circular A-89. The Office of the Senior Procurement Executive coordinates the submission of departmental information to the General Services Administration (GSA), which maintains required records, and provides guidance on reporting procedures.

Each OA /SO must:

- Provide the OSPE with a point of contact (POC) who is responsible for reporting CFDA data.
- Advise the OSPE of new financial assistance programs and provide information on the programs as required.
- Provide annual information updates to the OSPE upon request. The content and format of submissions will be provided by that office.

IV. REQUESTS FOR REIMBURSEMENT

Payments are governed by 2 CFR §200.305, which applies to each OA/SO. 2 CFR §200.305 states as follows:

- (a) For states, payments are governed by Treasury-State Cash Management Improvement Act of 1990, as amended (CMIA) agreements and default procedures codified at 31 CFR Part 205 “Rules and Procedures for Efficient Federal-State Funds Transfers” and TFM 4A-2000 Overall Disbursing Rules for All Federal Agencies.
- (b) For non-Federal entities other than states, payments methods must minimize the time elapsing between the transfer of funds from the United States Treasury or the pass-through entity and the disbursement by the non-Federal entity irrespective of whether the payment is made by electronic funds transfer, issuance or redemption of checks, warrants, or payment by other means. See also 2 CFR §200.302 Financial management paragraph (f). Except as noted elsewhere in 2 CFR Part 200, the OA/SO must require recipients to use only OMB-approved standard government-wide information collection requests to request payment.
 - (1) The non-Federal entity must be paid in advance, provided it maintains or demonstrates the willingness to maintain both written procedures that minimize the time elapsing between the transfer of funds and disbursement by the non-Federal entity, and financial management systems that meet the standards for fund control and accountability as established in this part. Advance payments to a non-Federal entity must be limited to the minimum amounts needed and be timed to be in accordance with the actual, immediate cash requirements of the non-Federal entity in carrying out the purpose of the approved program or project. The timing and amount of advance payments must be as close as is administratively feasible to the actual disbursements by the non-Federal entity for direct program or project costs and the proportionate share of any allowable indirect costs. The non-Federal

- entity must make timely payment to contractors in accordance with the contract provisions.
- (2) Whenever possible, advance payments must be consolidated to cover anticipated cash needs for all Federal awards made by the OA/SO to the recipient.
 - (i) Advance payment mechanisms include, but are not limited to, Treasury check and electronic funds transfer and should comply with applicable guidance in 31 CFR Part 208.
 - (ii) Non-Federal entities must be authorized to submit requests for advance payments and reimbursements at least monthly when electronic fund transfers are not used, and as often as they like when electronic transfers are used, in accordance with the provisions of the Electronic Fund Transfer Act (15 U.S.C. §§1693-1693r).
 - (3) Reimbursement is the preferred method when the requirements in paragraph (b) (1) and (2) cannot be met, when the OA/SO sets a specific condition per §200.207. Specific conditions, or when the non-Federal entity requests payment by reimbursement. This method may be used on any Federal award for construction, or if the major portion of the construction project is accomplished through private market financing or Federal loans, and the Federal award constitutes a minor portion of the project. When the reimbursement method is used, the Federal awarding agency or pass-through entity must make payment within 30 calendar days after receipt of the billing, unless the OA/SO or pass-through entity reasonably believes the request to be improper.
 - (4) If the non-Federal entity cannot meet the criteria for advance payments and the OA/SO or the pass-through entity has determined that reimbursement is not feasible because the non-Federal entity lacks sufficient working capital, the OA/SO or pass-through entity may provide cash on a working capital advance basis. Under this procedure, the OA/SO or pass-through entity must advance cash payments to the non-Federal entity to cover its estimated disbursement needs for an initial period generally consistent with the non-Federal entity's disbursing cycle. Thereafter, the Federal awarding agency or pass-through entity must reimburse the non-Federal entity for its actual cash disbursements. Use of the working capital advance method of payment requires that the pass-through entity provide timely advance payments to any qualified subrecipient in order to meet the subrecipient's actual cash disbursements. The working capital advance method of payment must not be used by the pass-through entity if the reason for using this method is the unwillingness or inability of the pass-through entity to provide timely advance payments to the subrecipient to meet the subrecipient's actual cash disbursements.
 - (5) Use of resources before requesting cash advance payments. To the extent available, the non-Federal entity must disburse funds available from program income (including repayments to a revolving fund), rebates, refunds, contract settlements, audit recoveries, and interest earned on such funds before requesting additional cash payments.

- (6) Unless otherwise required by Federal law, payments for allowable costs by non-Federal entities must not be withheld at any time during the period of performance unless the conditions of 2 CFR §200.207 Specific conditions, 2 CFR Part 200 Subpart D—Post Federal Award Requirements, 2 CFR §200.338 Remedies for Noncompliance, or the following apply:
- (i) The non-Federal entity has failed to comply with the project objectives, Federal statutes, regulations, or the terms and conditions of the Federal award.
 - (ii) The non-Federal entity is delinquent in a debt to the United States as defined in OMB Guidance A-129, “Policies for Federal Credit Programs and Non-Tax Receivables.” Under such conditions, the Federal awarding agency or pass-through entity may, upon reasonable notice, inform the non-Federal entity that payments must not be made for obligations incurred after a specified date until the conditions are corrected or the indebtedness to the Federal government is liquidated.
 - (iii) A payment withheld for failure to comply with Federal award conditions, but without suspension of the Federal award, must be released to the non-Federal entity upon subsequent compliance. When a Federal award is suspended, payment adjustments will be made in accordance with 2 CFR §200.342 Effects of suspension and termination.
 - (iv) A payment must not be made to a non-Federal entity for amounts that are withheld by the non-Federal entity from payment to contractors to assure satisfactory completion of work. A payment must be made when the non-Federal entity actually disburses the withheld funds to the contractors or to escrow accounts established to assure satisfactory completion of work.
- (7) Standards governing the use of banks and other institutions as depositories of advance payments under Federal awards are as follows.
- (i) The OA/SO and pass-through entity must not require separate depository accounts for funds provided to a non-Federal entity or establish any eligibility requirements for depositories for funds provided to the non-Federal entity. However, the non-Federal entity must be able to account for the receipt, obligation, and expenditure of funds.
 - (ii) Advance payments of Federal funds must be deposited and maintained in insured accounts whenever possible.
- (8) The non-Federal entity must maintain advance payments of Federal awards in interest-bearing accounts, unless the following apply.
- (i) The non-Federal entity receives less than \$120,000 in Federal awards per year.
 - (ii) The best reasonably available interest-bearing account would not be expected to earn interest in excess of \$500 per year on Federal cash balances.

- (iii) The depository would require an average or minimum balance so high that it would not be feasible within the expected Federal and non-Federal cash resources.
 - (iv) A foreign government or banking system prohibits or precludes interest bearing accounts.
- (9) Interest earned amounts up to \$500 per year may be retained by the non-Federal entity for administrative expenses. Any additional interest earned on Federal advance payments deposited in interest-bearing accounts must be remitted annually to the Department of Health and Human Services, Payment Management System, Rockville, MD 20852. Interest amounts up to \$500 per year may be retained by the non-Federal entity for administrative expense.

Within DOT, non-Federal entities request payment of the Federal share of allowable costs from the appropriate financial office within each OA/SO. The OA/SO may either make an advance payment or a reimbursement payment to the recipient, based upon the stated terms and conditions of the grant.

The designated technical representative of each OA/SO must review requests for payments. In approving the request for payment, the following should be considered in addition to 2 CFR §200.404:

- The amount requested is reasonable considering the effort expended and/or progress attained by the non-Federal entity in fulfilling the grant statement of work;
- The non-Federal entity's compliance with the financial and program progress reporting requirements of the grant;
- If the Federal funds requested are reasonable in relationship to the matching share requirements; and
- Any costs that require further clarification or documentation from the Recipient to resolve questions about whether the costs are allowable can be determined by reviewing 2 CFR §200.403.

Payment should be rejected 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.

V. RECIPIENT REPORTING REQUIREMENTS¹

Reporting requirements for non-Federal entities are outlined in 2 CFR §§200.327 – 200.329. This covers financial reporting, monitoring and reporting program performance, and reporting on real property.

Unless otherwise approved by OMB, the OA/SO may solicit only the standard, OMB-approved government-wide data elements for collection of financial information (at time of publication the Federal Financial Report (FFR) or such future collections as may be approved by OMB and listed on the OMB web-site). This information must be collected with the frequency required by the terms and conditions of the Federal award, but no less frequently than annually nor more frequently than quarterly except in unusual circumstances, for example where more frequent reporting is necessary for the effective monitoring of the Federal award or could significantly affect program outcomes, and preferably in coordination with performance reporting.

The FFR contains four sections: (1) Status of Federal Cash, (2) Status of Federal Expenditures and Unobligated Balance, (3) Status of Recipient Share, and (4) Program Income. The FFR reporting requirements must be outlined in the grant award documentation (terms and conditions, master agreements), including required sections and frequency.

¹ 2 CFR §§200.327 – 200.329

CHAPTER 8 | RECORDS MANAGEMENT

This Chapter discusses the records management requirements DOT follows under the 2 CFR §§200.333 – 200.337. This chapter also addresses issues concerning record retention and access for both the OA/SO making the award and the non-Federal entity receiving the award.

I. RETENTION REQUIREMENTS FOR RECORDS^{1,2}

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/SO or pass-through entity in the case of a subrecipient. Each OA/SO and pass-through entity must not impose any other record retention requirements upon non-Federal entities, except as permitted by 2 CFR §200.333.

A. INDIRECT COST RATE PROPOSALS AND COST ALLOCATION PLANS: SUBMISSION ISSUES FOR NEGOTIATIONS³

If the proposal, plan, or other computation is required to be submitted to the OA/SO (or to the pass-through entity) to form the basis for negotiation of the rate, then the three year retention period for its supporting records starts from the date of such submission.

If the proposal, plan, or other computation is not required to be submitted to the OA/SO (or to the pass-through entity) for negotiation purposes, then the three year retention period for the proposal, plan, or computation and its supporting records starts from the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

II. REQUESTS FOR TRANSFER OF RECORDS⁴

The OA/SO must request transfer of certain records to its custody from the non-Federal entity when it determines that the records possess long-term retention value. However, in order to avoid duplicate recordkeeping, the OA/SO may make arrangements for the non-Federal entity to retain any records that are continuously needed for joint use.

¹ 2 CFR §200.333

² 2 CFR §§200.327

³ 2 CFR §200.333(f)(1) – (2)

⁴ 2 CFR §200.334

III. ACCESS TO RECORDS⁵

This section discusses records of non-Federal entities. The Federal awarding agency, Office of the Inspector General, the Government Accountability Office, and the pass-through entity, or any of their authorized representatives, must have the right of access to any documents, papers, or other records of the non-Federal entity which are pertinent to the Federal award, in order to make audits, examinations, excerpts, and transcripts. The right also includes timely and reasonable access to the non-Federal entity's personnel for the purpose of interview and discussion related to such documents.

IV. INTERNAL RECORDKEEPING PERTAINING TO THE AWARD FILE

This section addresses best practices for records retention (paper and electronic) that must be kept by the OA/SO pertaining to the award.

A. AWARD PROGRAM MANAGEMENT RECORDS⁶

This includes records related to the coordination, implementation, execution, monitoring, and completion of award programs, such as

- Background files, including
 - Program announcements
 - Notice of Funding Availability or Funding Opportunity Announcement, including Federal Register notices
 - Requests for Proposals
- Application packages (including blank forms, instructions, guidelines, templates, checklists, evaluation criteria, etc. for a specific award opportunity)
- Application evaluation files (including panel composition, correspondence, instructions, etc. for a specific award opportunity)

These files should be destroyed three years after final action is taken on the file, but longer retention is authorized is required for business use. If an agency believes that certain of these records warrant permanent retention, it must submit a records schedule to NARA to cover these records. However, policy records reflecting the legal establishment, goals, objectives, development, implementation, modification, and termination of an agency award are not authorized for disposal. Agencies must submit a records schedule to NARA to cover these records or apply an existing schedule.

⁵ 2 CFR§200.336

⁶ NARA, General Records Schedule (GRS) 1.2: Grant and Cooperative Agreement Records, Item 010 (Sept. 2016).

B. PRE-AWARD FILES

A pre-award file should be started when a request to create a financial assistance award is received from the OA/SO program office. Thus, the pre-award file includes descriptions of pre-award activities and information on all applications received, not only those that will receive awards.

A pre-award file may consist of the following pre-award documents, as they become available, or if applicable:

- The document requesting a financial assistance award, including: the statement of goals, legislative authority, explanation of required cost share, and extent of competition.
- The milestone schedule
- The justification for Other-than-Full-and-Open Competition (JOTFOC), if necessary
- The evaluation plan/review criteria
- The NOFO, including the full text
- A list of all received applications and information on where application documentation is located
- The technical evaluation/panel review reports
- The signed selection memorandum
- The cost analyses, any budget documents, and pre-award reviews of potential recipients conducted during the administrative evaluation
- The summary of negotiations/discussions (if conducted) or the decision to award without discussions, including an explanation, and any evaluation reports, panelist comments, review ratings or scores
- The non-Federal entity application(s) selected for award
- State plans, if any
- The award review
- The technical review
- Funding amendment requests and actions, if any
- A copy of the congressional notification (as required)
- The notification sent to unsuccessful applicants and the notice of grant award, along with grant terms and conditions, sent to selected recipients

C. POST-AWARD FILES⁷

A post-award file may contain documentation from the pre-award file and documentation from the actions taken after the award. A post-award file may consist of the following documents, as they become available, or if applicable:

- The award (see 2 CFR §200.210 information contained in a Federal award);
- The letter(s) to the non-Federal entity;

⁷ NARA, GRS 1.2: Grant and Cooperative Agreement Records, Item 020 (Sept. 2016).

- The approved application(s);
- The certifications, including the SF 424B, SF 424C, or SF 424D; Debarment, Suspension, and Other Responsibility Matters (Primary and Lower Tier); Certifications regarding Drug-Free Workplace and Lobbying; SF LLL;
- The correspondence (miscellaneous);
- The award (see 2 CFR §200.210 Information contained in a Federal award);
- The kickoff meeting checklist;
- The monitoring plan;
- The agreement amendments;
- The funding requests and financial reports;
- The periodic and final progress reports, (progress, narrative, financial);
- The site visit reports/desk audits;
- The audit reports and/or other monitoring or oversight documentation;
- The annual budget reviews;
- The government property reports;
- Summary reports;
- The equipment disposition in accordance with 2 CFR §200.311, 2 CFR §120120.313, 2 CFR §200.315, 2 CFR §200.136; and
- The closeout checklist.

Successful award case files must be retained for a period of 10 years after the final action is taken on the file, but this period may be extended, up to permanently, if required for business use.⁸ If the agency believes that permanent retention is required, the agency must submit a records schedule to NARA that would cover these records. However, this does not include any financial transaction records related to such grant awards.⁹

Unsuccessful applications must be destroyed three years after the last action is taken on the file, but they may be retained longer if required for business use.¹⁰

D. AWARD PRODUCTS OR DELIVERABLES¹¹

The tangible result of a completed grant or cooperative agreement produced/delivered by the recipient to satisfy the purpose of the award. These are maintained separately from other program records and may include materials such as a:

- report, study, or publication
- conference paper and/or presentation
- book, journal article, or monograph
- training material, educational aid, or curriculum content
- plan, process, or analysis
- database or dataset
- audio, video, or still photography
- website content or other Internet component

⁸ NARA, GRS 1.2: Grant and Cooperative Agreements, Item 020 (Sept. 2016).

⁹ See, NARA, GRS 1.1: Financial Management and Reporting Records (Sept. 2016).

¹⁰ NARA, GRS 1.2: Grant and Cooperative Agreement Records, Item 021 (Sept. 2016).

¹¹ NARA, GRS 1.2: Grant and Cooperative Agreement Records, Item 030 (Sept. 2016).

- documentation related to any other kind of final product or deliverable (for example, documentation about a physical structure or element such as a building, kiosk, trail, or cabin; an instrument, device, or prototype)
- software or computer code

Obviously, not all awards result in tangible products or deliverables. These documents should be destroyed when their business use ends, but may be maintained permanently if a records schedule is submitted to NARA.

E. AWARD FILE OWNERSHIP AND RETENTION

A designated representative in each OA/SO should maintain the official award file(s). If any litigation, claim, negotiation, audit, or other action involving the records has been started before the expiration of the three-year period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular three-year period, whichever is later.

The OA, the DOT Office of Inspector General (OIG), and the Comptroller General of the United States, or any of their authorized representatives, have the right of access to any pertinent books, documents, papers, or other records of Recipients and sub-Recipients in order to make audits, examinations, excerpts, and transcripts. The rights of access in this section are not limited to the required retention period but last as long as the records are retained. The OA/SO and pass-through entity must not impose any other access requirements upon non-Federal entities.

The Federal Freedom of Information Act (5 U.S.C. §552) does not generally apply to records held by Recipients and sub-Recipients. Unless required by Federal, State, or local law, Recipients and sub-Recipients are not required to permit public access to their records.

CHAPTER 9 | OVERSIGHT

Chapter nine discusses the different types of oversight mechanisms utilized to ensure grant recipients follow Federal laws and regulations, and Federal guidelines.

I. DEFINING COST PRINCIPLES

Each OA/SO must:

1. Establish guidance for their entity, for implementing the Cost Principles.
2. If assigned cognizant responsibility, review and approve indirect cost rates and cost allocation plans in accordance with 2 CFR Part 200.416. The cognizant OA/SO must also request required audits and prepare the negotiation agreement. OAs/SOs must forward the electronic copies of agreements to the Department of Health and Human Services for inclusion in its information system, to be made available to Federal agencies.
3. Accept indirect cost rate and cost allocation plan agreements negotiated and approved by the Federal cognizant agency or by the OA/SO within DOT having cognizant administrative responsibility.
4. Provide technical assistance to recipients in cases in which they need help in determining appropriate sub-recipient costs and indirect cost rates. The cognizant OA/SO must review the recipient's procedures for determining the sub-recipient's indirect cost rate, recommend changes as required, and certify the rate so that it can be relied upon by all agencies providing funds to the sub-recipient. Documents setting forth the approved rates for sub-recipients and the approvals of these rates must be documented.
5. Use the cost principles established by subpart 31.2 of the FAR when administering financial assistance programs for "For-profit" organizations, unless justification is provided for establishing another basis for costs.
6. When preparing cost estimates for major projects, include all eligible project costs, including interest on "Grant Anticipation Notes" (GANs)¹ or for FHWA, "Grant Anticipation Revenue Vehicles" (GARVEES)² that are funded with Federal dollars. Interest costs associated with the project that are not paid with Federal funds, (e.g., GAN interest paid entirely with local funds or revenue bond interest) must be noted in project financial plans, but not considered as part of project cost estimates.

II. PROJECT/RECIPIENT MONITORING

A. APPLYING A RISK-BASED APPROACH TO MONITORING

The following are examples of factors that may affect the nature, timing, and extent of the-award monitoring process:

¹ Title 49 §§5307 & 5309

² Title 23 §122

1. PROGRAM COMPLEXITY

Programs with complex compliance requirements may have a higher risk of noncompliance.

2. AMOUNT OF AWARDS

Larger dollar awards may be of greater risk, although lower dollar awards are not necessarily low-risk.

3. RECIPIENT RISK

Generally, new recipients may require closer monitoring, unless they have a successful history of managing Federal funds from other Federal awarding agencies. For existing recipients, based on results of during-the-award monitoring and recipient audits, a recipient may warrant closer monitoring if it has a history of noncompliance, new personnel, or new or substantially changed systems.

B. COMPLIANCE

Items listed in the initial approved budget are considered approved. However, as additional expenses arise during the course of the project, the non-Federal entity must request approval to incur certain or all additional expenses.

Federal Financial Reports should be reviewed to determine whether the recipient is expending funds in accordance with the project plan; the rate of expenditure should be approximately equal to where the project should be at that time in the project year. Excessive over- or under-expenditures should be questioned to determine whether the recipient needs technical assistance in meeting the goals of the project or in staying within the project budget.

The cost share of the non-Federal entity should be monitored to ensure that it is contributing to the project as projected, in accordance with the approved application.

C. REVISION OF BUDGET AND PROGRAM PLANS

(a) The approved budget for the Federal award summarizes the financial aspects of the project or program as approved during the Federal award process. It may include either the Federal share³ and non-Federal share or only the Federal share, depending upon Federal awarding agency requirements. The approved budget must be related to performance for program evaluation purposes whenever appropriate.⁴

³ 2 CFR §200.43

⁴ 2 CFR §200.308(a)

(b) Recipients are required to report deviations from the budget or project scope or objective, and request prior approvals from Federal awarding agencies for budget and program plan revisions, in accordance with 2 CFR Part 200.⁵

D. SITE VISITS

1. TYPES OF SITE VISITS

Federal awarding agencies have the ability to conduct many types of site visits, including the following:

ROUTINE VISITS

Depending on the program, OA/SO staff may perform a site visit for each recipient at a set interval or visit a random sampling of recipients every year.

REACTIVE VISITS

A specified recipient may be visited to investigate a problem found through other monitoring activities.

REVERSE VISITS

The recipient visits the Federal awarding agency to receive technical assistance.

PROACTIVE VISITS

The Federal awarding agency visits recipients to provide technical assistance.

2. PERMISSION TO CONDUCT SITE VISITS

An OA/SO may make site visits as warranted by program needs.⁶ Factors to consider in determining whether a site visit is warranted include whether:

- The non-Federal entity had prior significant problems;
- The total award amount is significant;
- The non-Federal entity had identified problems in the quarterly progress report;
- The statement of work includes potentially high risk activities; or
- Non-compliance with quarterly performance reporting requirements is evident.

Site visits may focus on performance, compliance, or both. With regards to compliance, the site visit may look at programmatic compliance, financial compliance, or both.

⁵ 2 CFR §200.308(b)

⁶ 2 CFR §200.328(e)

3. PREPARING FOR A SITE VISIT

The basic steps that may be used when preparing for a site visit are:

1. Meet with other OA/SO staff to determine the goals for the visit.
2. Select the site visit team for their expertise related to the site visit goals.
3. Contact the non-Federal entity and conduct a conference call to plan the visit. Get input from the non-Federal entity on their goals for the visit, such as specific areas in which they need technical assistance. Determine the people that should be interviewed, the documents that should be requested, and the project activities that should be observed.
4. Send a letter or email confirming the decisions made during the conference call.
5. Review documents in the award file, including the approved application, any requests for approval to change the budget or scope of the award, financial reports, progress reports, audits, and any notes on routine phone or email contacts.
6. Retrieve the site visit instrument and customize as needed for this recipient. Site visit checklists should correspond to the performance and compliance expectations stated in the assistance agreement.

A site visit checklist should include the requirement, source of the requirement (e.g., statute, regulation, or assistance agreement provision), whether the recipient is in compliance, and space to note required corrective actions and due dates.

Refer to the following sections for information on what to look for in these areas during a site visit:

- Financial Management (Accounting) System;
- Procurement System;
- Personnel System;
- Property Management System;
- Travel System; and
- Subaward System.

4. ACTIVITIES ON-SITE

A site visit should consist of an entrance conference, document review, staff interviews, observation of project activities, and an exit conference. The site visit checklist should guide the visit. The site visit team should keep careful notes as they complete the checklist. At the exit conference, a summary of results should be shared with the management of the non-Federal entity. Areas in which corrective actions are required should be discussed, as well as due dates for implementing those actions.

5. CONDUCTING A DESK REVIEW

A desk review involves requesting documentation from the non-Federal entity and reviewing it for compliance with federal and DOT requirements. Refer to the section “Records to Review” for information on what to consider during a desk review.

III. AUDITS AND AUDIT REPORTS

A. THE SINGLE AUDIT

The single audit encompasses:

- The examination of a non-Federal entity's financial records and statements,
- Federal award transactions and expenditures;
- The general management of the non-Federal entity's operations;
- The systems of internal control; and
- The financial assistance agreement received during the audit period.

The audit period is the period of time of the non-Federal entity's operations that will be examined in the single audit. The time period of the single audit is the non-Federal entity's fiscal year.

Depending on the recipient, the single audit can vary. Therefore, the single audit differs from recipient to recipient and program to program.

The Single Audit is divided into the following two areas: compliance and financial.

1. THE COMPLIANCE COMPONENT

The compliance component of the single audit covers the study and understanding (planning stage) as well as the testing and evaluation (examination stage) of the recipient with respect to Federal award usage, operations, and compliance with laws and regulations.

2. THE FINANCIAL COMPONENT

The financial component is substantially similar to a financial audit of a non-Federal entity which includes the audit of the financial statements and accompanying notes.

B. THE SINGLE AUDIT CLEARINGHOUSE DATABASE

1. REPORT SUBMISSIONS

The audit must be completed and the data collection form described in paragraph (b) and (c) in 2 CFR §200.512 must be submitted within the earlier of 30 calendar days after receipt of the auditor's report(s), or nine months after the end of the audit period. If the due date falls on a Saturday, Sunday, or Federal holiday, the reporting package is due the next business day.⁷

2. DETERMINING AUDITS

⁷ CFR §200.512(a)

A non-Federal entity that expends \$750,000 or more during the non-Federal entity's fiscal year in Federal awards must have a single or program-specific audit conducted for that year in accordance with the provisions of 2 CFR Part 200, Subpart F- Audit Requirements.⁸

3. AUDIT STANDARDS

The auditor must conduct the audit in accordance with the requirements in 2 CFR Part 200, Subpart F, the Generally Accepted Government Auditing Standards (GAGAS), and guidance provided in 2 CFR §200 Appendix XI—Compliance Supplement.

The compliance supplement, created by the OMB for single audits, is considered the most important tool of both the auditor and the non-Federal entity when performing, or being subject to, a single audit. It was created following amendments in 1996 to the Single Audit Act and serves to identify existing important compliance requirements that the Federal government expects to be considered as part of a single audit. Without it, auditors would need to research thousands of laws and regulations for each single program of a non-Federal entity to determine which compliance requirements are important to the Federal government. For single audits, the compliance supplement replaces any agency audit guides and other audit requirement documents for individual federal programs.

C. THE AUDIT REPORTING PACKAGE

The results of each single audit are summarized in a data collection form, which is made public on the Single Audit Clearinghouse Database. The Single Audit Clearinghouse Database is located online at: <http://www.harvester.census.gov/sac>.

If the recipient had findings related to funds provided directly or indirectly by DOT, the agency can obtain a copy of the audit from the Single Audit Clearinghouse.

The audit reporting package consists of the following parts:

- The audited entity's financial statements;
- A schedule of expenditure of Federal funds;
- the auditor's opinions and reports on the financial statements, internal control, and compliance;
- A schedule of findings and questioned costs;
- A summary schedule of prior audit findings; and
- A corrective action plan (if there are findings to be corrected).

For purposes of monitoring, the most interesting parts of the reporting package are the schedule of findings and questioned costs, the summary schedule of prior audit findings, and the corrective action plan. The auditor's opinions and reports are usually almost entirely boiler-plate language, but should be reviewed to identify references to problems found that did not meet the threshold for

⁸ 2 CFR §200.501(a)

being reported as findings, as well as references to separate letters to non-Federal entity management.

The schedules of findings and questioned costs and prior audit findings should be reviewed first to identify any findings related to the OA/SO programs being monitored, but also to identify any findings that could affect projects funded by the OA/SO, such as systemic problems with timekeeping or equipment inventory procedures. Areas of weakness identified by the auditor should be monitored more closely through desk reviews, site visits, and follow-ups on the corrective action plan.

D. AUDIT RESOLUTION

The DOT Operating Administration will review, work to close recommendations and monitor audits documented in the Federal Clearinghouse Database. The applicable program officials work with the non-Federal entity to achieve resolution of the finding(s) and render a management decision of each of the finding(s) identified.

The management decision must clearly state:

- Whether or not the audit finding is sustained;
- The reasons for the decision; and
- The expected auditee action to repay disallowed costs, make financial adjustments, or take other action.⁹

If the auditee has not completed corrective action, a timetable for follow-up should be given. Prior to issuing the management decision, the OA/SO official may request additional information or documentation from the recipient, including a request for auditor assurance related to the documentation, as a way of mitigating disallowed costs. The management decision should describe any appeal process available to the non-Federal entity. A management decision must include the reference numbers the auditor assigned to each audit finding in accordance with 2 CFR §200.516(c).¹⁰ 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.

IV. DOT AUDIT RESPONSIBILITIES

DOT personnel have various responsibilities in regards to oversight and audits are an oversight tool. The agency follows the 2 CFR Subpart F as well as various DOT Orders and Guidance to provide oversight of Financial Assistance awards. The following are the different types of Federal-wide agency audit responsibilities.

- a. Cognizant agency for audit responsibilities. A non-Federal entity expending more than \$50 million a year in Federal awards must have a Cognizant agency for audit. The designated

⁹ CFR §200.521(a)

¹⁰ CFR §200.521(e)

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.¹¹

- b. Oversight agency for audit responsibilities. An auditee who does not have a designated cognizant agency for audit will be under the general oversight of the Federal agency determined in accordance with §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.¹²
- c. The Federal Awarding Agency's Responsibilities. The Federal awarding agency must perform the following for the Federal awards it makes (See also the requirements of §200.210 Information contained in a Federal award):
 - (1) Ensure that audits are completed and reports are received in a timely manner and in accordance with the requirements of this part.
 - (2) Provide technical advice and counsel to auditees and auditors as requested.
 - (3) Follow-up on audit findings to ensure that the recipient takes appropriate and timely corrective action. As part of audit follow-up, the Federal awarding agency must:
 - (i) Issue a management decision as prescribed in §200.521 Management decision;
 - (ii) Monitor the recipient taking appropriate and timely corrective action;
 - (iii) Use cooperative audit resolution mechanisms (see §200.25 Cooperative audit resolution) to improve Federal program outcomes through better audit resolution, follow-up, and corrective action; and
 - (iv) Develop a baseline, metrics, and targets to track, over time, the effectiveness of the Federal agency's process to follow-up on audit findings and on the effectiveness of Single Audits in improving non-Federal entity accountability and their use by Federal awarding agencies in making award decisions.
 - (4) Provide OMB annual updates to the compliance supplement and work with OMB to ensure that the compliance supplement focuses the auditor to test the compliance requirements most likely to cause improper payments, fraud, waste, abuse or generate audit finding for which the Federal awarding agency will take sanctions.
 - (5) Provide OMB with the name of a single audit accountable official from among the senior policy officials of the Federal awarding agency who must be:
 - (i) Responsible for ensuring that the agency fulfills all the requirements of paragraph (c) of this section and effectively uses the single audit process to reduce improper payments and improve Federal program outcomes.

¹¹ CFR §200.513(a)(1)

¹² CFR §200.513(b)

- (ii) Held accountable to improve the effectiveness of the single audit process based upon metrics as described in paragraph (c)(3)(iv) of this section.
 - (iii) Responsible for designating the Federal agency's key management single audit liaison.
- (6) Provide OMB with the name of a key management single audit liaison who must:
- (i) Serve as the Federal awarding agency's management point of contact for the single audit process both within and outside the Federal Government.
 - (ii) Promote interagency coordination, consistency, and sharing in areas such as coordinating audit follow-up; identifying higher-risk non-Federal entities; providing input on single audit and follow-up policy; enhancing the utility of the FAC; and studying ways to use single audit results to improve Federal award accountability and best practices.
 - (iii) Oversee training for the Federal awarding agency's program management personnel related to the single audit process.
 - (iv) Promote the Federal awarding agency's use of cooperative audit resolution mechanisms.
 - (v) Coordinate the Federal awarding agency's activities to ensure appropriate and timely follow-up and corrective action on audit findings.
 - (vi) Organize the Federal cognizant agency for audit's follow-up on cross-cutting audit findings that affect the Federal programs of more than one Federal awarding agency.
 - (vii) Ensure the Federal awarding agency provides annual updates of the compliance supplement to OMB.
 - (viii) Support the Federal awarding agency's single audit accountable official's mission.¹³

A. THE ASSISTANT SECRETARY FOR ADMINISTRATION RESPONSIBILITIES ARE:

1. Issue any additional guidance as required;
2. Provide and assign a person responsible for providing annual updates to the OMB compliance supplement.
 - (i) Responsible for ensuring that the agency fulfills all the requirements of section c. above and effectively uses the single audit process to reduce improper payments and improve Federal program outcomes.
 - (ii) Held accountable to improve the effectiveness of the single audit process based upon metrics as described in section c (3)(iv) of the section on "The Federal Awarding Agency's Responsibilities."
 - (iii) Responsible for designating the Federal agency's key management single audit liaison.

B. THE DOT OIG RESPONSIBILITIES AND COORDINATION

¹³ CFR §200.513(c)(1)-(6)

The Inspector General Act of 1978, as amended, authorizes the Inspector General (IG) of DOT to conduct and supervise audits relating to the programs and operations of DOT, including Quality Control Reviews of Single Audit Reports.

C. OA/SO AUDIT RESPONSIBILITIES

See also section 2 CFR 200.513 for responsibilities by Federal agencies..

COMPLIANCE MEASURES

A. ENFORCEMENT MEASURES

Remedies for noncompliance are provided under 2 CFR §200.338. The OA/SO may:

- Temporarily withhold cash payments pending correction of the deficiency by the non-Federal entity or more severe enforcement action;
- Disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance;
- Wholly or partly suspend or terminate the Federal award, but refer to 2 CFR §200.340 for details regarding notice requirements;
- Initiate suspension or debarment proceedings as authorized under 2 CFR Part 180 and 2 CFR Part 1200;
- Withhold further Federal awards for the project or program; and
- Take other remedies that may be legally available.¹⁴

Also, in taking an enforcement action, the designated OA/SO representative must provide the non-Federal entity with an opportunity for such hearing, appeal, or other administrative proceeding to which the non-Federal entity is entitled under any statute or regulation applicable to the action involved.¹⁵

Pursuant to 2 CFR §200.342, costs to the non-Federal entity resulting from obligations incurred by the non-Federal entity during a suspension or after termination of a Federal award or subaward are not allowable unless the OA/SO expressly authorizes them in the notice of suspension or termination or subsequently. However, costs during suspension or after termination are allowable if:

- The costs result from obligations which were properly incurred by the non-Federal entity before the effective date of suspension or termination and have not been incurred, in anticipation the suspension and debarment; and

¹⁴ 2 CFR 200.338(a)-(f)

¹⁵ 2 CFR 200.341

- The costs would be allowable if the Federal award was not suspended or expired normally at the end of the period of performance in which the termination takes effect.¹⁶

For some OAs/SOs, enforcement actions need to be approved by the associate administrator for the office involved as well as coordinated with the respective Office of Chief Counsel.

The enforcement remedies, including suspension and termination, do not preclude the non-Federal entity from being subject to debarment and suspension under Executive Order 12549.

B. CRITERIA FOR FEDERAL PROGRAM RISK

The auditor's determination should be based on an overall evaluation of the risk of noncompliance occurring that could be material to the Federal program. The auditor must consider criteria, such as described in paragraphs (b), (c), and (d) of 2 CFR §200.519, to identify risk in Federal programs. Also, as part of the risk analysis, the auditor may wish to discuss a particular Federal program with auditee management and the Federal agency or pass-through entity.

C. SUSPENSION

Suspension is an appropriate enforcement measure in cases of serious noncompliance, for instance when the deficiency is egregious, or when a recipient fails to implement its corrective action plan. Examples of situations that might support a decision to suspend a grant may include, but are not limited to:

1. Serious risk to persons or property;
2. Violations of Federal, State, or local criminal statutes; and
3. Material violation(s) of the grant or cooperative agreement.

After identifying the violation or deficiency and attempting resolution, the OA/SO should work with Senior Management and the OA/SO's Chief Counsel's Office or General Counsel's Office and the Senior Debarring Official (SDO) to determine the appropriate course of action. If preliminary measures fail to bring the recipient into compliance, many Federal agencies generally will suspend (rather than immediately terminate) a grant and provide the recipient an opportunity to take appropriate corrective action before making a termination decision. The OA/SO may decide to terminate the grant if the recipient does not take appropriate corrective action during the suspension period.

If the OA/SO determines that suspension is the appropriate remedy, it should send a notice to the recipient, informing the recipient that the award will be suspended. Notice of suspension should be sent by certified mail (return receipt requested) to the authorized representative of the recipient organizational, with a copy to the recipient's project director. The notice will set forth the terms of the suspension and its effective date. The notice should set forth the reasons for the suspension and its effective date, and the actions expected of the recipient.

¹⁶ 2 CFR 200.342(a)-(b)

D. NOTIFICATION OF TERMINATION REQUIREMENT¹⁷

If the deficiencies are not corrected during the suspension period, or when the deficiencies are so egregious that an end to the grant is the only appropriate option, the OA/SO should determine whether to proceed with termination.

Notice of termination should be sent by certified mail (return receipt requested) to the authorized recipient organizational representative, with a copy to the recipient project director. The termination notice should set forth the reasons for the action and its effective date. Any appeal procedures should also be explained in the termination notice.

When the termination action is final, the recipient must refund the unobligated or unspent portion of funds. It is customary to allow costs related to obligations incurred prior to the suspension or termination notice, provided that those costs would be otherwise allowable and cannot be cancelled. Costs resulting for obligations incurred by the recipient following termination of the award are not allowable unless expressly allowed by the termination notice.

E. WITHHOLDING FUTURE AWARDS

The OA/SO may decide not to make a continuation award for the next budget period for one or more of the following reasons:

1. The recipient failed to show satisfactory progress in achieving project objectives.
2. The recipient failed to meet the award terms and conditions in the preceding budget period.
3. Continued funding would not be in the best interests of the Federal government.

V. CLOSEOUT

The grant closeout is the process by which the OA/SO and the Recipient perform final actions that document completion of work, administrative requirements, and financial requirements of the grant agreement. The OA/SO, the Recipient, and other involved parties need to fulfill these requirements promptly to avoid unnecessary delays in grant closeout. Prompt closeout of awards is important so that accurate agency financial reports can be prepared and unused award funds can be made available for other purposes. The designated OA/SO official should immediately begin to close out the award as soon as all required reports have been submitted.^{18,19}

Closeout Checklist

Before officially closing out an award, ensure that the following steps have been completed:

¹⁷ 2 CFR §200.340

¹⁸ 2 CFR §200.343

¹⁹ GONE ACT – DOT DASH 2016-01

- The recipient has submitted all required performance reports under the award, including the final performance report.
- The recipient has submitted all required financial reports under the award, including the final financial report.
- The designated OA/SO official has reviewed the final financial report and the amounts listed in the report align with amounts in the OA/SO's system.
- The equipment/property has been properly determined.
- The recipient has accounted for all required cost sharing, if applicable. If the required cost sharing was not provided, the Federal government's proportionate share of federal funding must be returned to the Federal government prior to closeout.
- The designated OA official has prepared a —Notification of Closeout|| or —Noncompliance, as appropriate, to send to recipient.
- If the recipient was noncompliant, areas of noncompliance have been corrected.
- Unused funds have been de-obligated.

A. EQUIPMENT DISPOSITION

Subject to certain conditions, title to equipment purchased with project funds vests in the recipient.²⁰ When the recipient no longer needs the equipment purchased with project funds, to continue the original project or support other projects sponsored by the OA/SO, the disposition provisions of 2 CFR §200.313 and 2 CFR §1201.313 apply.

For federally-owned equipment, title remains vested in the Federal government.²¹ When federally-owned equipment is no longer needed on the project or at the end of the project, the recipient must report the property to the Federal awarding agency for further Federal agency utilization.²² If the Federal awarding agency has no further need for the property, it must declare the property excess and report it for disposal to the General Services Administration, unless the Federal awarding agency has statutory authority to dispose of the property by alternative methods.²³

²⁰ 2 CFR §200.313(a)

²¹ 2 CFR §200.312(a)

²² 2 CFR §200.312(a)

²³ 2 CFR §200.312(b)

B. REAL PROPERTY DISPOSITION

Real property should be used by the Recipient for the originally authorized purposes as long as needed for that purpose, during which time the Recipient must not dispose of or encumber its title or other interests.²⁴

When real property is no longer needed for the originally authorized purpose, the recipient must request disposition instructions from the Federal awarding agency. The instructions will provide for one of the following alternatives:²⁵

1. Retain title after compensating the OA/SO. The amount paid to the OA/SO will be computed by applying the OA/SO's percentage of participation in the cost of the original purchase to the fair market value of the property.
2. Sell the property and compensate the OA/SO. The amount due to the OA/SO will be calculated by applying the OA/SO's percentage of participation in the cost of the original purchase to the proceeds of the sale after deduction of any actual and reasonable selling and preparation expenses. When a recipient is directed to sell property, sales procedures must be followed that provide for competition to the extent practicable and result in the highest possible return.
3. Transfer title to the OA/SO or to a third-party designated/approved by the OA/SO. The recipient must be paid an amount calculated by applying its percentage of participation in the purchase of the real property to the current fair market value of the property.

VI. AFTER CLOSEOUT

A. MONITORING THE USE OF REAL PROPERTY AND EQUIPMENT AFTER CLOSEOUT

At closeout, most issues related to equipment and real property will be resolved. Once disposition instructions have been issued and carried out by the recipient, there should be no further obligations by either party related to real property. However, if the recipient still needs the real property for the originally authorized purpose or for another federally supported purpose, the Federal government retains its interest until the recipient no longer needs it for any federally supported purpose, at which time disposition instructions should be requested. Until such time, the designated OA/SO official remains responsible for monitoring the recipient's use of the property.

For equipment, the OA/SO is required to issue disposition instructions within 120 calendar days after receiving the final equipment inventory. The inventory should list all equipment acquired under the award as well as all federally owned equipment. Once disposition instructions have been issued and carried out by the recipient, there should be no further obligations by either party related to equipment.

²⁴ 2 CFR §200.311(b)

²⁵ 2 CFR §200.311(c)(1)-(3)

B. REVIEWING POST-AWARD AUDIT REPORTS

2 CFR §200.512 requires that recipients have their audits completed within the earlier of 30 calendar days after receipt of the auditor's report, or nine months after the end of their fiscal year. It is common for audits to be completed after the end of the project period. If there are audit findings related to the OA/SO project, the designated OA/SO official for the award is still responsible for issuing management decisions on those findings within six months after receiving the audit report, and following up on any required corrective actions.²⁶

The management decision must clearly state whether or not the audit finding is sustained; the reasons for the decision; and the expected auditee action to repay disallowed costs, make financial adjustments, or take other action. If the auditee has not completed its corrective action, a timetable for follow-up should be provided. Prior to issuing the management decision, the designated OA/SO official may request additional information or documentation from the recipient, including a request for auditor assurance related to the documentation, as a way of mitigating disallowed costs. The management decision should describe any appeal process available to the recipient.²⁷

C. REPORTING FRAUD, WASTE, AND ABUSE

When agency management identifies waste, fraud and abuse, these actions should be reported to management, an ethics officer, or the Office of the Inspector General.

²⁶ 2 CFR 200.521(d)

²⁷ 2 CFR 200.521(a)

CHAPTER 10 | OTHER

GENERAL PROVISIONS

A. ENGLISH LANGUAGE¹

All OA/SO grant agreement and cooperative agreement announcements and award information must be in the English language. Applications must be submitted in the English language and must be in terms of U.S. dollars. If the OA/SO receives applications in another currency, the OA/SO will evaluate the application converting the foreign currency to United States currency using the date specified for receipt of the application.

Non-Federal entities may translate the OA/SO award and other documents into another language. In the event of inconsistency between any terms and conditions of the OA/SO award and any translation into another language, the English language meaning will control. When a significant portion of the non-Federal entity's employees who are working on the OA/SO award are not fluent in English, the non-Federal entity must provide the OA/SO award in English and the language(s) in which employees are more familiar.

B. CONFLICT OF INTERESTS²

The OA/SO must establish conflict of interest policies for grant agreements and cooperative agreements. The non-Federal entity must disclose in writing any potential conflict of interest to the OA/SO or pass-through entity in accordance with applicable OA/SO policy.

C. MANDATORY DISCLOSURES³

The non-Federal entity or applicant for an OA/SO grant agreement or cooperative agreement must disclose, in a timely manner, in writing to the OA/SO or pass-through entity all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the OA/SO award. Failure to make required disclosures can result in any of the remedies described in 2 CFR §200.338 remedies for noncompliance, including suspension or debarment. (See also 2 CFR Part 180, 31 U.S.C. §3321, and 41 U.S.C. 2313).

¹ 2 CFR §200.111

² 2 CFR §200.112

³ 2 CFR §200.113

APPENDIX 1 -- RECENT REPORTS BY GAO AND OIG
ON FINANCIAL ASSISTANCE PROGRAMS

1. DOT Discretionary Grants. Problems with Hurricane Sandy Transit Grant Selection Process Highlight the Need for Additional Accountability, GAO-17-20: Published: November 2016. *[Waiting for public release]*
2. Use of 'Other Transaction' Agreements Limited and Mostly for Research and Development Activities, GAO-16-209: Published: January 7, 2016. Publicly Released: January 7, 2016. Available at <http://www.gao.gov/products/GAO-16-209>
3. Department of Transportation Should Measure the Overall Performance and Outcomes of the TIGER Discretionary Grant Program, GAO-14-766: Published: Sep 23, 2014. Publicly Released: September 23, 2014. Available at <http://www.gao.gov/assets/670/666025.pdf>
4. Process Inefficiencies and Costs Discourage Participation in FRA's RRIF Program, CR-2014-054. June 10, 2014. Available at <https://www.oig.dot.gov/sites/default/files/RRIF%20final.pdf>
5. Actions Needed to Improve Documentation of Key Decisions in the TIGER Discretionary Grant Program, GAO-14-628R: Published: May 28, 2014. Publicly Released: May 28, 2014. Available at <http://www.gao.gov/assets/670/663630.pdf>
6. Project Estimates Could Be Improved to Better Inform Future Decisions, GAO-13-304: Published: Mar 28, 2013. Publicly Released: Mar 29, 2013. Available at <http://www.gao.gov/assets/660/653401.pdf>
7. Financing Program Could Benefit from Increased Performance Focus and Better Communication, GAO-12-641: Published: Jun 21, 2012. Publicly Released: July 23, 2012. Available at <http://www.gao.gov/assets/600/591782.pdf>
8. Additional Actions Needed to Strengthen Grants Management, GAO-12-158: Published: Dec 13, 2011. Publicly Released: Dec 13, 2011. Available at <http://www.gao.gov/assets/590/587274.pdf>
9. The Department of Transportation Found That It Improperly Obligated Motor Carrier Grant Funds, GAO-11-517R: Published: May 5, 2011. Publicly Released: May 12, 2011. Available at <http://www.gao.gov/assets/100/97475.pdf>
10. Recording Clearer Reasons for Awards Decisions Would Improve Otherwise Good Grantmaking Practices, GAO-11-283: Published: Mar 10, 2011. Publicly Released: Apr 11, 2011. Available at <http://www.gao.gov/assets/320/316415.pdf>
11. Competitive Grant Programs Could Benefit from Increased Performance Focus and Better Documentation of Key Decisions, GAO-11-234: Published: Mar 30, 2011. Publicly Released: Apr 11, 2011. Available at <http://www.gao.gov/assets/320/317196.pdf>