

DEPARTMENT OF ENERGY GUIDE TO FINANCIAL ASSISTANCE

*A GUIDE TO THE AWARD AND ADMINISTRATION
OF FINANCIAL ASSISTANCE*



OFFICE OF PROCUREMENT AND ASSISTANCE POLICY
OFFICE OF ACQUISITION MANAGEMENT

Effective Date – October 1, 2020

Significant Changes and Clarifications to the Guide to Financial Assistance (GFA)

Effective October 1, 2020

Overall Document

- Editorial changes have been made to either clarify or enhance the intended meaning of a sentence and/or section or ensure consistency with data contained in DOE or Government-wide systems and/or policy and regulation documents.
- Contracting Officer (CO) has been replaced with Grants Officer (GO). GO is assumed to include COs where COs perform the same duties.
- Current changes to the document will be annotated with SEPT 2020, significant changes are identified and described below.

Significant Changes, Clarifications and Other Changes to the GFA

- *1.2.3 Contracting Officer* has been updated and replaced with *Grants Officer*.
- *1.3 Catalog of Federal Domestic Assistance* has been updated to include *Assistance Listings* and *beta.sam* to be consistent with regulations.
- *1.6.1 Non-Discrimination Statutes* updated to include reference to *EO 13798*.
- *2.1.1. Selecting the Appropriate Award Instrument: Procurement Contract or Financial Assistance Agreement (I) Contract* has been updated to remove *31 U.S.C. § 6303*.
- *2.1.2 Selecting the Appropriate Award Instrument: Procurement Contract or Financial Assistance Agreement (F) Substantial Involvement* updated to include *narrative*.
- *2.1.3 Competition* has been updated to replace *Unsolicited Application* with *Unsolicited Proposals to be consistent with agency policy*.
- *2.1.5 Reporting* has been updated to include the most recent *Office and Scientific and Technology Information* required reports.
- *Chapter 2.3. Applications* has been updated and renumbered to include *Letters of Intent Concept Papers* and change *Unsolicited Applications* to *Unsolicited Proposals*.
- Added *2.3.2 Letters of Intent* and *2.3.3 Concept Papers* to be consistent with agency policy.
- *2.3.5 Unsolicited Proposals* updated references
- *2.5.6 Cost Sharing* updated to include *the Cost Share Pilot Program*.
- *2.5.8 Eligibility Requirements* updated to be consistent with regulations.
- *2.5.14 and 2.5.15* are updated to include current regulatory language.
- *2.5.16 Organizational Conflicts of Interest* added new section.
- *2.5.17 Financial Conflicts of Interest for Prime Recipients and Subrecipients* added new section.
- *2.6 Congressional Notifications* has been updated to remove the *Advance Notification Award System* form steps and replace with the *ANA User Guide Hyperlink*.

- 2.7. *FAADS Plus, FFATA, and USASpending.gov* has been updated to be consistent with regulations.
- 3.3.3 *One-Time Extensions* has been removed from *Chapter 3* and relocated to *Chapter 4* to include requirements for approval by a GO.
- *Chapter 4* has been updated and renumbered to include newly added sections *Subrecipient Monitoring, One-Time Extensions, and Carryover*.
- 4.5 *Reporting* has been updated to include current actions available to GOs for recipients that are in noncompliance with reporting requirements of their award for Office of Scientific and Technical Information reporting.
- 4.7. *Property* has been updated to include current Uniform Commercial Code requirement.
- 4.7.5 *Equipment* updated guidance to include requirement for For-Profit Entities.
- *Chapter 7 Closeout* was updated to incorporate required Scientific/Technical reports and portal for submission of obtaining reports.

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THE DOE GUIDE TO FINANCIAL ASSISTANCE

INTRODUCTION

The Guide to Financial Assistance is a reference document that provides a compilation of non-regulatory information and guidance related to the implementation of existing statutory and regulatory requirements. Regulatory requirements are contained in 2 CFR Part 200 as amended by 2 CFR Part 910 (the DOE Financial Assistance Regulations) and applicable program rules. Each year DOE obligates nearly \$2 billion on financial assistance actions in the form of grants and cooperative agreements to states, local and tribal governments, universities, non-profit organizations, for-profit organizations, and individuals.

This guidance is intended to help DOE staff carry out its financial assistance activities. Information contained herein is intended to be consistent with the regulatory guidance provided in 2 CFR part 200 as amended by 2 CFR part 910. In the event of inconsistencies between the information provided in this Guide and provisions of the DOE Financial Assistance Regulations, the Regulation controls. Any apparent inconsistencies between this guide and the DOE Financial Assistance Regulations should be reported to the Contract and Financial Assistance Policy Division, of the Office of Policy, of the Office of Acquisition Management.

The DOE Guide to Financial Assistance will be issued and maintained by the Contract and Financial Assistance Policy Division of the Office of Acquisition Management in coordination with the Office of Acquisition Management, National Nuclear Security Administration (NNSA), and will be amended to add material or to revise existing material as necessary.

Questions regarding specific topics in the Guide and suggested topics may be submitted to the Contract and Financial Assistance Policy Division.

CHAPTER 1 – BASIC INFORMATION

1.1 DOE as a Financial Assistance Issuing Organization

1.1.1 Legislative Authority

The Federal Grant and Cooperative Agreement Act (FGCA) of 1977 (31 U.S.C. 6301-08) establishes criteria for determining whether a transaction is financial assistance. A financial assistance instrument is used when the principal purpose of the transaction is the transfer of money or property to accomplish a public purpose of support or stimulation as authorized by Federal statute. The Act also establishes the basis for determining whether to use a grant or a cooperative agreement.

Other statutes, such as the Energy Policy Acts of 1992 and 2005 (EPAAct), also provide authority for DOE to enter into financial assistance agreements. Generally, these statutes will identify the purpose of the program, the type of financial assistance to be provided, eligible activities to be funded, eligible recipients, how funds will be distributed, and any special administrative requirements pertinent to the program such as cost sharing.

1.1.2 Program Rules

Statutes governing a number of DOE programs stipulate that the Secretary is authorized or required to issue regulations to carry out the purposes of the statutes and to provide for their orderly administration. These regulations are usually developed by the organization responsible for the implementation and administration of the program statute, with the assistance of the Office of General Counsel and the review and comment of appropriate DOE offices. Programmatic regulations provide more detailed guidance about how a particular program operates. Examples of program rules within DOE are the State Energy Conservation Program at 10 CFR 420, the Weatherization Program at 10 CFR 440, and the Office of Science Financial Assistance Program at 10 CFR 605.

Not all program offices issue program rules, i.e., regulations. For example, Fossil Energy in operating the Clean Coal Program issued internal guidance, only since the authorizing statute did not require implementing regulations and provided sufficient detail regarding program requirements.

1.1.3 Financial Assistance Rules

As a result of Congress passing the Federal Financial Assistance Management Improvement Act, PL 106-107, OMB identified 2 CFR as the location for Federal grants requirements. On December 26, 2013, final guidance for the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards was published in the Federal Register. This guidance updated 2 CFR Part 200 and replaced all previous guidance from the relevant OMB circulars.

DOE incorporated the regulations of 2 CFR Part 200 into DOE's Financial Assistance Regulations in 2 CFR Part 910 as part of a Government-wide interim final rule which was published in the Federal Register December 19, 2014. 2 CFR Part 910 also contains DOE specific regulations including expanding the definition of non-Federal entity for DOE to include For-Profit entities; adding back

additional coverage from 10 CFR 600 required by DOE statute; and adding back coverage specific to For-Profit entities which existed in 10 CFR 600.

The regulations in 2 CFR Part 200 as amended by 2 CFR Part 910 are effective for new awards and renewal awards issued on or after December 26, 2014 with the exception of the audit provisions which take effect for audits of recipient's Fiscal Years which on or after December 26, 2014.

DOE also made technical corrections in Sections 10 CFR parts 602, 605, and 733 to update out of date references including references to 10 CFR 600.

1.1.4. Internal Guidance

In addition to the above statutes and regulations, DOE periodically issues guidance to Contracting Officers by way of Financial Assistance Letters, policy flashes and guides.

1.2 Functions and Responsibilities of Federal Staff

1.2.1 Senior Procurement Executive

DOE has designated two Senior Procurement Executives; one for non-NNSA activities and one for NNSA activities. The Senior Procurement Executive is responsible for the overall quality and effectiveness of the financial assistance function within DOE. These functions include:

- Publishing regulations and procedural guidance;
- Assuring an efficient and effective financial assistance process;
- Developing financial assistance training;
- Providing advice and guidance regarding financial assistance policies and procedures;
- Approving or denying requests for class deviations;
- Authorizing assistance actions that exceed the delegated authority of heads of contracting activities; and
- Making final decision on any appeals to Grants Officer's decisions if the decision falls under the SPE jurisdiction as specified in 2 CFR part 910.128.

1.2.2 Head of Contracting Activity

The head of the contracting activity is the DOE official with senior management authority for the award and administration of financial assistance instruments within one or more DOE organizational elements and is responsible for:

- overseeing the financial assistance function within that activity and ensuring that agency policies and procedures are implemented;
- establishing review and approval levels for financial assistance actions;
- reviewing requests for deviations; and
- appointing Contracting and Grants Officers.

1.2.3 Grants Officer (SEPT 2020)

An official of DOE authorized to execute financial assistance awards on behalf of DOE and who is responsible for the business management and non-program aspects of the financial assistance process. The following activities are the responsibility of the Grants Officer (GO) or a designated representative. The GO should consult and coordinate with appropriate officials such as program staff, legal counsel, servicing finance officers and the Inspector General, in carrying out these activities. Within the limits of delegated authority, a duly appointed GO may:

- Execute, administer and amend financial assistance instruments;
- Determine the appropriate type of financial assistance instrument;
- Develop and post funding opportunity announcements;
- Receive and review recipients' requests to either incur costs or undertake activities which require DOE prior approval, consulting with program staff as necessary;
- Administer financial assistance award instruments in such a way as to safeguard the funds and the interests of the Federal Government, ensure that all significant actions are fully documented, and assist program organizations in ensuring the most effective use of program funds for financially assisted activities;
- Serve as focal point for dissemination and interpretation of financial assistance policies and procedures;
- Perform budget reviews and cost analysis (if needed), risk assessments, and other related reviews such as adequacy of an applicant's accounting system, prior to award of financial assistance instruments;
- Negotiate, as necessary, the financial and business arrangements of financial assistance instruments, including cost share and program income;
- Ensure that recipients comply with all terms and conditions of the award;
- Review and approve or disapprove requests for payment, if cost reimbursable;
- Review financial reports;
- Maintain the official financial assistance files and ensure that they contain all pertinent materials, records, and documentation;
- Arrange for pre-award and post-award audits, as appropriate; review annual audits (e.g. Single Audit ; and resolve audit findings on DOE awards; and
- Take actions required to close out financial assistance instruments.

1.2.4 Program Manager

The Program Manager (PM) is an official of a program office who has been delegated responsibility for implementation and administration of a specific program which may include one or more projects. This may include oversight of the development of program regulations and/or program announcements, supervision of the evaluation of applications/plans, and development of recommendations for ranking and selection.

The PM must establish, maintain, and use the appropriate CFDA/Assistance Listing number for its program funding opportunity announcements and awards. The PM may also delegate some or all of his or her responsibility for overseeing or approving specific award and administration issues within a program to a Technical Project Officer (TPO) either within Headquarters or a field activity.

1.2.5 Technical Project Officer

The TPO is an individual designated in writing by the GO and whose assigned responsibilities include developing the programmatic aspects of a proposed announcement, participating in the technical review and evaluation of applications, participating in the development of recommendations for selection, and monitoring the programmatic aspects of project performance.

1.2.6 Single Audit Accountable Official

The Single Audit Accountable Official is a senior policy official of the Federal awarding agency who is responsible for ensuring that Federal awarding agency responsibilities identified in 2 CFR 200.513(c) are fulfilled including designating a Key Management Single Audit Liaison. See Chapter 5 for the DOE Single Audit Accountable Official.

1.2.7 Key Management Single Audit Liaison

The Key Management Single Audit Liaison serves as the Federal awarding agency's management point of contact for the single audit process both within and outside the Federal Government supporting the Single Audit Accountable Official mission by promoting interagency coordination; identifying higher-risk non-Federal entities; providing input on single audit and follow-up policy; studying ways to use single audit results to improve Federal award accountability and best practices; overseeing Single Audit related training, ensuring appropriate and timely follow-up and corrective action on audit findings, facilitating coordination of cross-cutting audit findings and initiatives'; and provides annual updates of the compliance supplement to OMB. See Chapter 5 for the DOE Key Management Single Audit Liaison.

1.3 Catalog of Federal Domestic Assistance (CFDA) (SEPT 2020)

The Catalog of Federal Domestic Assistance (CFDA) is an E-Gov initiative managed by the General Services Administration (GSA) which provides a list of all federal financial assistance and nonfinancial assistance programs available to a variety of applicants.

The CFDA, now called Assistance Listings on beta.SAM.gov, helps users find general information about the assistance, identify program objectives, eligibility requirements, and links to current opportunities on Grants.gov related to a particular assistance listing.

CFDA numbers are the system for identifying and sorting the 2,000+ federal programs. Each CFDA number contains five digits and appears in the following format: ##.### (e.g., 10.001 or 98.102).

Program Offices that are authorized to provide financial assistance are required to establish and maintain an active CFDA in the Assistance Listing database. The Program Office must use the appropriate CFDA number for their program when they initiate a financial assistance action to create a funding opportunity announcement (FOA) or financial assistance award. . The program office is responsible for administering their CFDA number(s). A yearly review of the CFDA information is required to ensure the program information is up-to-date. The type of program information that is included in the CFDA listing is listed below.

A "Federal domestic assistance program" may in practice be called a program, an activity, a service, a project, a process, or some other name, regardless of whether it is identified as a separate program by statute or regulation. It will be identified in terms of its legal authority, administering office, funding, purpose, benefits, and beneficiaries.

"Assistance" or "benefits" refers to the transfer of money, property, services, or anything of value, the principal purpose of which is to accomplish a public purpose of support or stimulation authorized by Federal statute. Assistance includes, but is not limited to grants, loans, loan guarantees, scholarships, mortgage loans, insurance, and other types of financial assistance, including cooperative agreements; property, technical assistance, counseling, statistical, and other expert information; and service activities of regulatory agencies. It does not include the provision of conventional public information services.

In addition to the CFDA number, each entry in the Assistance Listing includes the following information:

- (1) Authorization
- (2) Objectives
- (3) Types of Assistance
- (4) Uses and Use Restrictions
- (5) Eligibility Requirements
- (6) Application and Award Process
- (7) Assistance Considerations
- (8) Post Assistance Requirements
- (9) Financial Information
- (10) Program Accomplishments
- (11) Regulations, Guidelines, and Literature

- (12) Information Contacts
- (13) Related Programs
- (14) Examples of Funded Projects
- (15) Criteria for Selecting Proposals

It is the responsibility of the program office to choose and use the correct, current CFDA number and include it on the requisition used to initiate the FOA or award. For new awards made after 10/01/2010, neither the miscellaneous CFDA number nor an archived CFDA number can be used on new awards. A current valid CFDA number from the Assistance Module at <https://beta.sam.gov/> that is appropriate for the program must be used.

There is not a specific input field on the Requisition form in STRIPES for the CFDA number. The program office must include the CFDA number in the “header information”. If a requisition is received by the procurement office without a CFDA number, the program office should be contacted immediately to obtain the correct, current CFDA number.

The CFDA number does not change during the life of the financial assistance award. The CFDA number is an important identifier of the authority and funding authorization under which the FOA or financial assistance award was issued.

It is important that the current, correct and valid published CFDA number is chosen and included on the STRIPES award before the base award is released since the CFDA number cannot be changed on the base award after it is released.

If the program representative has any questions, or needs assistance setting up a CFDA for their program, they must consult the Assistance Listing coordinator for DOE – Terri Diehl (terri.diehl@hq.doe.gov or 202-287-1878).

1.4 Financial Assistance Career Management Program

DOEs Acquisition Workforce consists of a broad range of financial assistance professional and technical personnel including: Grants Specialists/Grants Officer, Technical Monitors, Financial Assistance Personnel, Technical Project Officers, Personal Property Managers, Real Estate Contracting Officers, Federal Project Directors/Program Managers, as well as personnel who perform acquisition-related activities and functions within DOE such as Contracting Officers and Specialists.

DOE’s goal is to continue to develop and maintain a highly professional, well-trained Acquisition Workforce. DOE requires Acquisition Workforce members to meet a variety of Federal and DOE established certifications based on a combination of education, experience, and training.

DOE offers a specialized Acquisition Career Management Program (ACMP) to support the training and professional development of the Acquisition Workforce. Grant Specialists and

Grant Officers should follow the requirements in the Acquisition Certification Programs Handbook to attain a Certification in Financial Assistance in order to award and/or administer financial assistance

Information on DOE's ACMP or the Acquisition Certifications Program Handbook can be found on the Certifications and Professional Development Website:

https://powerpedia.energy.gov/wiki/Acquisition_Workforce and in [DOE Order 361.1](#)

“Acquisition Career Management Program”.

1.5 Other Transaction Authority

Section 1007 of the Energy Policy Act of 2005 gives the Secretary of Energy authority to enter into transactions (other than already existing statutorily defined instruments - contracts, cooperative agreements, and grants), subject to the same terms and conditions as those given to the Secretary of Defense under 10 U.S.C. §2371. The purposes of this authority are to reduce barriers that prevent some for-profit firms from participating in DOE's research, development, and demonstration (RD&D) programs and broaden the technology base available to meet DOE mission requirements. A Technology Investment Agreement (TIA) is a special type of assistance instrument used to increase the involvement of commercial firms in the Department's RD&D programs. A TIA may be either a type of cooperative agreement or a type of assistance transaction other than a cooperative agreement, depending on the intellectual property provisions.

On May 9, 2006, DOE published a final rule that established guidance and procedures for the award and administration of TIAs. Grant Officers should review 10 CFR 603.

1.6 National Policy Requirements

A national policy requirement is a requirement that is prescribed by a statute, Executive Order (E.O.), policy guidance issued by the Executive Office of the President, or regulation that specifically refers to grants, cooperative agreements, or financial assistance in general. The requirement must also be either cross-cutting more than one agency's awards or agency-wide, not program specific.

Applicants and recipients are required to comply with these requirements. Submission of an application provides an assurance that the applicant/recipient will comply with the requirements. Many of these public policies require flow down provisions to subrecipients and contractors.

The following subchapters provide general information on the more common public policy assurances. A complete list of the National Policy Assurances to be incorporated as Award Terms can be found at: https://www.nsf.gov/bfa/dias/policy/fedrtc/appendix_c.pdf

1.6.1 Non-Discrimination Statutes and Policies (SEPT 2020)

A number of statutes bar recipients of Federal financial assistance from excluding persons, because of their race, sex, color, disability, age, or national origin, from participation in Federally supported activities. These include: Title VI of the Civil Rights Act of 1964 (barring discrimination on grounds of race, color, or national origin); Section 504 of the Rehabilitation Act (barring discrimination against individuals with disabilities); and the Age Discrimination Act. Title IX of the Educational Amendments of 1972 bars sex discrimination in federally assisted education programs or activities. In addition to statutory prohibitions, E.O. 11246 bars various types of discriminatory employment practices under grants for construction. The following sections discuss the application of each of these Acts and E.O. 11246.

(A) Civil Rights Act of 1964

Section 602 of the Civil Rights Act of 1964 ([42 USC § 2000d et seq.](#)) provides that no person in the U.S. shall, on the grounds of race, color or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance. Section 602 requires that each Government agency (empowered to extend such financial assistance) issue rules or regulations implementing Title VI of the Act with respect to such programs or activities administered by the agency.

(B) Rehabilitation Act

Section 504 of the Rehabilitation Act of 1973, as amended ([29 USC § 794](#)), provides that “no otherwise qualified individual with a disability in the United States...shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance....”

(C) Title IX - Sex Discrimination

Subject to certain exceptions regarding admission policies at certain religious and military organizations, Title IX of the Education Amendments of 1972 (20 USC §1681-1686) prohibits the exclusion of persons on the basis of sex from any education program or activity receiving Federal financial assistance. All DOE recipients must comply with Title IX.

(D) Age Discrimination Act

The Age Discrimination Act of 1975, as amended ([42 USC §6101 et seq.](#)), provides that pursuant to regulations issued by the Department of Health and Human Services “no person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving Federal financial assistance.”

(E) Equal Employment Opportunity under E.O. 11246

E.O. 11246, as amended, requires contractors and subcontractors performing federally assisted construction projects to provide equal opportunity, without regard to race, color, religion, sex or national origin, to persons employed or seeking employment with them. This E.O. may apply to some DOE grants for construction depending on the authorizing statute for the project.

(F) Religious Freedoms under E.O. 13798

(G) The Architectural Barriers Act of 1968 (42 U.S.C. § 4151 et seq.)

Recipients must ensure that all persons have ready access to, and use, of buildings regardless of disability in the design, construction or alteration of buildings and facilities financed with Federal funds.

1.6.2 Environmental Policies

Environmental policy requires the recipient to protect the environment and human interaction with land, air, water or contact with certain substances. The following sections discuss the application of each of these policies:

(A) The Clean Air Act (42 U.S.C. § 7401, et. seq.) and Clean Water Act (33 U.S.C. § 1251, et. seq.), as implemented by Executive Order 11738 [3 CFR, 1971-1975 Comp., p. 799] and Environmental Protection Agency rules at 40 CFR Part 32, Subpart J, are concerned with protecting and enhancing the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population and encouraging and promoting pollution prevention.

(B) Recipients must protect the quality of the human environment, including wetlands, and provide any help DOE may need to comply with the National Environmental Policy Act (NEPA) (42 U.S.C. § 4321 et. seq.) and assist in preparing Environmental Impact Statements or other environmental documentation.

(C) Recipients must manage impacts on the following:

(1) Flood-prone areas, and comply with the National Flood Insurance Act of 1968 and Flood Disaster Protection Act of 1973 (42 U.S.C. § 4001 et. seq.).

(2) Land and water resources of coastal zones, and comply with the Coastal Zone Management Act of 1972 (16 U.S.C. § 1451, et. seq.).

(3) Coastal barriers along the Atlantic and Gulf coasts and Great Lakes' shores, and comply with the Coastal Barriers Resource Act (16 U.S.C. § 3501 et. seq.), concerning preservation of barrier resources.

- (4) Any existing or proposed component of the National Wild and Scenic Rivers system, and comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. § 1271 et seq.).
- (5) Underground sources of drinking water in areas that have an aquifer that is the sole or principal drinking water source, and comply with the Safe Drinking Water Act (42 U.S.C. § 300h-3).
- (D) Recipients must comply with applicable provisions of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4821-4846), as implemented by the Department of Housing and Urban Development (24 CFR part 35). The requirements concern lead-based paint in housing owned by the Federal Government or receiving Federal assistance.
- (E) Recipients must comply with section 6002 of the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. § 6962), and implementing regulations of the Environmental Protection Agency (40 CFR Part 247) which require the purchase of recycled products by States or political subdivision of States.

1.6.3 Protection of Human Subjects and Animals in Research

Most research involving living human subjects must be conducted by institutions holding a Federal-Wide Assurance (FWA), negotiated with the Department of Health and Human Services' Office of Human Research Protection (see <https://www.hhs.gov/ohrp>) and overseen (on an annual basis) by an Institutional Review Board (IRB). Research solely involving deceased persons, anonymous collections of tissue, or observation may fall into the exemptions of the Common Rule for the Protection of Human Research Subjects.

(A) Humans

The recipient is responsible for the protection of the rights and welfare of living human subjects involved in activities supported by DOE. All research involving human subjects is subject to the requirements of DOE Order 443.1C, Protection of Human Subjects; Protection of Human Subjects; 10 CFR 745, Protection of Human Subjects; and 45 CFR Part 46, ["Common Rule"] Protection of Human Subjects.

(B) Animals

The recipient is responsible for the humane care and treatment of any animal used or intended for use in such activities as field or laboratory research, development, training, experiments, biological testing or for related purposes supported by DOE grants. Several Acts cover the treatment of animals in research including; the Animal Welfare Act (7 U.S.C. § 2131 et seq.) and the regulations promulgated there under by the Secretary of Agriculture (9 CFR 1.1-4.11) pertaining to the humane care, handling, and treatment of vertebrate animals held or used for research, teaching or other activities supported by Federal awards and the Endangered Species Act of 1973 and implementing regulations of the Departments of Interior (50 CFR Parts 10-24) and Commerce (50 CFR Parts 217-227).

1.6.4 Other National Policies

Numerous other policies are in place that promote ethical business practices, healthful workplaces and respect for people and property. These policies include:

- (A) Debarment and Suspension
- (B) Drug-free workplace
- (C) Lobbying
- (D) Research Misconduct
- (E) Native American graves protection and repatriation
- (F) Historic preservation

A complete list is located at: https://www.nsf.gov/bfa/dias/policy/fedrtc/appendix_c.pdf The current list is posted under Appendix C National Policy Requirements updated October 2017.

CHAPTER 2 – PRE-AWARD

2.1 Planning

2.1.1 Selecting the Appropriate Award Instrument: Procurement Contract or Financial Assistance Agreement

(A) Responsibility. The Contracting Officer (CO) or Grants Officer (GO), based on input from the program official pertaining to the purpose of the award, is responsible for selecting the appropriate award instrument. This decision is significant because the laws and policies governing procurement generally differ from those governing financial assistance.

(B) Basis of Decision. In accordance with the “Federal Grant Cooperative Agreement (FGCA) as codified in 31 U.S.C. § 6301 to 6308, the decision whether to use a contract or a financial assistance agreement must be based on the principal purpose of the award, including its intended primary beneficiary. The type of recipient (e.g., university, non-profit, or for-profit organization) or a requirement for cost sharing are not factors in determining the appropriate award instrument.

(1) Contract. The CO should use a procurement contract when: (1) the principal purpose of the instrument is to acquire (by purchase, lease, or barter) property or services for the direct benefit or use of the United States Government; or (2) he/she decides in a specific instance that the use of a type of procurement contract is appropriate. If DOE provides specifications for the project, is having the project completed based on its own identified

needs, or will directly use the report or results of the project to support its mission objectives, then, in most cases, the principal purpose is to acquire property or services for the direct benefit or use of DOE and the award instrument should be a contract.

31 U.S.C. § 6303 provides agencies the flexibility to select a procurement contract after a deliberate determination that it is appropriate, even if the purpose of the award is to accomplish a public purpose of support or stimulation. For example, a CO should select a procurement contract if the work is classified, even if the work serves a public purpose of support, to ensure that the appropriate FAR/DEAR security clauses are included in the award since the DOE financial assistance regulation does not include security requirements. Also, a CO should select a procurement contract if the award has the characteristics of a contractual relationship and includes contract requirements such as:

(1) Technical direction, except when such direction is necessary to redirect the work because of the interrelationship of the project to other projects (See 2.1.2(f)(3)); or when such direction qualifies as substantial involvement (See 2.12(b)(1); (2) monthly reporting requirements, except when special award conditions are needed for high risk recipients; and (3) fee, except for SBIR/STTR awards or in accordance with 10 CFR 605.15, or when otherwise specifically permitted by statute.

(2) Financial Assistance Instrument (i.e., grant or cooperative agreement). The GO should use a grant or cooperative agreement whenever the principal purpose of the relationship is the transfer of a thing of value to a recipient to carry out a public purpose of support or stimulation authorized by a law of the United States instead of acquiring property or services for the direct benefit or use of the United States Government. The primary beneficiary under a grant or cooperative agreement is the general public, as opposed to the United States Government. However, there may be situations where the Department expects to derive some use or benefit from the project activities. If the project will produce a benefit or use to DOE that is only indirect or incidental in nature, a grant or cooperative agreement may be used.

(3) Decision Process. To ensure that the appropriate instrument is selected, the GO should ask the following questions:

(a) Is the primary purpose of the award to acquire goods or services that will directly benefit or be used by the Department to further a specific DOE mission or requirement? If the answer to this question is “yes,” then the award instrument should be a contract. If the answer is “no,” then the GO should use a grant or cooperative agreement.

(b) Is the work to be performed by the recipient primarily for its own purposes in the furtherance of the public good, and DOE is merely supporting this effort with financial or other assistance? If the answer to this question is “yes,” then the award instrument should be a grant or cooperative agreement in most instances (See 2.1.(B)(1). If the answer is “no,” then the award instrument should be a contract.

(C) Statutory Language Effect on Instrument Selection. A statute authorizing or providing appropriations for a program or activity occasionally may specify the use of a particular award instrument, notwithstanding the fact that, under the guidance provided in the FGCA, the purpose of the award would necessitate the use of a different type of instrument. In these situations, the GO must attempt to harmonize the language of the two statutes. Unless the authorization or appropriation act provides that a particular award instrument must be used notwithstanding the provisions of the FGCA, the principles articulated in that statute and this guide generally should be applied to determine the appropriate award instrument. When confronted with conflicting statutory language, the Grants Officer should consult with legal counsel to determine the appropriate course of action.

(D) Examples of Ambiguous Circumstances.

(1) Conferences. The appropriate instrument for funding conferences should be determined based on the statutory criteria (i.e., the principal purpose of the conference, including the intended primary beneficiary). For example, a conference whose primary purpose is to exchange and disseminate information to the public should be funded using a grant. While the awarding office may benefit from information exchanged at the conference, the principal intent of the award is to stimulate dissemination of knowledge to benefit the public. If, however, a conference is being conducted to benefit a Federal agency, funding should be provided under a contract. For example, a conference to provide specialized training to grantees that would otherwise be provided by Federal agency personnel should be funded by a contract. In this example, although the recipients of the training benefit from the conference, the principal purpose of the award is for the Government to procure training services in lieu of conducting its own training program, thus meeting the FGCA contract standard of directly benefiting the Federal agency.

(2) Evaluations or studies. Evaluations or studies are other activities that, depending on the circumstances, can be appropriately awarded as either a financial assistance instrument or a contract. For example, a study to assess the benefits of solar energy for State and local communities should be funded using a grant if the primary beneficiaries are the State and local communities. However, if the study is being conducted to assist DOE in planning and forecasting its solar energy budget requirements or to prepare a mandated report for Congress, then a contract should be used. While the Federal Government might benefit from the information obtained from the study in the first scenario, the primary beneficiaries are the State and local communities. In the second scenario, the study is for the direct use of DOE, even though it may be disseminated to the general public and may be used by other organizations and governments in their own solar energy efforts.

2.1.2 Selecting the Type of Financial Assistance: Grant or Cooperative Agreement

(A) Responsibility. The GO, based on input from the program official on the extent of Federal involvement in the project, is responsible for selecting the appropriate financial assistance instrument.

(B) Differences. The primary distinguishing feature between a grant and cooperative agreement is that under a cooperative agreement substantial involvement is anticipated between the DOE program office and the recipient during performance of the funded activity. As a general rule, a cooperative agreement has the same characteristics as a grant; however, cooperative agreements also involve the following features that are not typical of a grant:

(1) Substantial Federal involvement in and contribution to the technical aspects of the effort are necessary for its accomplishment. This involvement may include collaboration, participation in the management of the project, or intervention in the activity and is over and above the exercise of Federal stewardship responsibilities (See paragraph 2.1.2 (e)).

(2) The nature of the collaboration is clearly defined and specified in a special award condition entitled “Statement of Substantial Involvement.”

(C) OMB Policy on Substantial Involvement. Agencies should limit Federal involvement in cooperative agreement activities to the minimum consistent with program requirements.

(D) Decision Process. Anticipated substantial Federal involvement is a relative rather than an absolute concept. The determination to use a cooperative agreement, as opposed to a grant, should be based primarily on “programmatic” considerations as differentiated from management considerations. A cooperative agreement should not be used solely as a means of exercising greater control over a recipient or the project than would be the case under a grant. The proposed Federal involvement must provide programmatic benefits that the recipient would not otherwise have available to it in carrying out the project. The general policy is:

(1) Substantial involvement is not anticipated if the recipient is expected to manage the project without agency collaboration, participation, or intervention, as long as it is run in accordance with the terms of the assistance instrument.

(2) Substantial involvement is anticipated if the project would not be possible without Federal collaboration or participation in the management of the project.

(E) No Substantial Involvement. Substantial involvement does not include the exercise of normal Federal stewardship responsibilities such as:

(1) Approving recipient plans prior to award.

(2) Providing technical assistance prior to the start of the activity and the recipient understands this prior to award, if requested by the recipient.

(3) Providing technical assistance to correct deficiencies in project or financial performance when reports or monitoring indicates some sort of problem.

- (4) Performing site visits.
- (5) Reviewing financial, performance, and audit reports.
- (6) Performing technical or performance reviews to determine whether to continue funding the next budget period.
- (7) Reviewing performance to ensure that the objectives, terms, and conditions of the award are accomplished.
- (8) Providing general administrative requirements, such as prior approvals required by the 2 CFR 200 as incorporated by 2 CFR 910 financial assistance regulations.
- (9) Reviewing performance after completion.

(F) Substantial Involvement. Federal involvement would exist and depending on the circumstances could be substantial, if such involvement includes, for example:

- (1) Review and approval of one stage before work can begin on a subsequent stage. Such review and approval is in addition to the exercise of the normal Federal stewardship responsibility to determine whether to continue funding the next budget period, which does not constitute substantial involvement. (See 2.1.2(e) for examples of no substantial involvement.)
- (2) Collaboration or joint participation in the project, such as, sharing facilities and personnel or a jointly authored report or education curriculum product.
- (3) Additional monitoring to permit specified kinds of direction or redirection of the work because of interrelationships with other projects.
- (4) Substantial direct operational involvement or participation is anticipated to ensure compliance with statutory requirements such as environmental protection. Such participation must be over and above the normal exercise of Federal stewardship responsibilities. (See paragraph 2.1.2(e) for examples of no substantial involvement.
- (5) The power to immediately halt an activity if detailed performance specifications (e.g., construction specifications) are not met. In this case, the “Substantial Involvement Statement” must include provisions that go beyond the normal suspension remedies available to the Federal Government for nonperformance.

(G) Award Provision – Statement of Substantial Involvement. The TPO must prepare a narrative “Statement of Substantial Involvement” for each cooperative agreement, which explicitly describes the nature, character, and extent of anticipated Federal involvement. Merely stating that “DOE will be substantially involved in the project” is not sufficient. These statements must be developed with care, ensuring that the Government’s responsibilities are described with sufficient specificity to avoid unnecessarily increasing the Department’s liability under the award. The GO is responsible for ensuring that the anticipated involvement is substantial (i.e., over and above the normal stewardship

responsibilities identified in paragraph (E)), and that the award provision clearly describes the nature and extent of the anticipated involvement.

(H) Funding Opportunity Announcement. If the GO determines that only cooperative agreements will be awarded under a specific program announcement, the announcement must include a Statement of Substantial Involvement as a proposed award term. If the GO determines that either a grant or a cooperative agreement may be awarded under the FOA announcement, the FOA announcement must specify that either grants or cooperative agreements may be awarded and that cooperative agreements will include a Statement of Substantial Involvement to be determined prior to award.

2.1.3 Competition

(A) It is DOE policy to use competition in the award of grants and cooperative agreements to the maximum extent feasible. This policy conforms to 31 USC 6301(3) which encourages the use of competition in awarding all grants and cooperative agreements. GOs must use merit-based, competitive procedures to award grants and cooperative agreements to the maximum extent feasible. Merit review is discussed below at paragraph 2.4.2(a).

(B) The GO may restrict eligibility to a type or types of applicant(s) if authorized by statute, program rule, or if appropriate to the activity to be funded. A decision to restrict eligibility shall be supported by the determination required by 2 CFR 910.126.

(C) The GO may award a grant or cooperative agreement on a noncompetitive basis only if the application satisfies one or more of the selection criteria in 2 CFR 910.126(c).

(D) The Determination of Non-Competitive Financial Assistance (DNFA) is prepared by the responsible program technical official in coordination with the GO and local Legal Counsel. The determination should include the following:

- (1) The name of the sponsoring program office;
- (2) The statutory authority for the award;
- (3) The name of the awarding office;
- (4) The type of award proposed (e.g. grant or cooperative agreement);
- (5) The name of the proposed recipient and the type of organization;
- (6) A description of the nature of the financial assistance to be provided (e.g. research or conference grant);
- (7) A description of the proposed project;
- (8) The total project cost;
- (9) Any cost share/matching required or proposed;

(10) A discussion of the programmatic evaluation conducted in accordance with the *Merit Review Guide for Financial Assistance and Guide for the Submission of Unsolicited Proposals* or a program specific rule and the results of that evaluation, including the overall merit and relevance to the DOE mission, the anticipated objectives and probability of success in meeting them, the quality of the proposed recipient's personnel and facilities, and the appropriateness and adequacy of the proposed budget;

(11) A description of the public purpose of support or stimulation to be served by the proposed award and, in non-technical terms, identification of any particular significance or specialized character of the proposed activity to be funded; and

(12) The criterion or criteria in 2 CFR Part 910.126(c), Competition, being relied on to justify the award and an explanation of why each criterion identified applies.

(E) The DNFA should have a signature page with at least the following:

(1) The concurrences of:

- a) initiator;
- b) the responsible program technical official (if different than the initiator); and
- c) local legal Counsel

(2) The approval of:

- a) the GO, and
- b) an approver at least one level above the GO

Note: The GO's approval shall consist of all local review concurrence requirements including business clearance reviews by the Office of Contract Management (see Acquisition Guide Chapter 71, Attachment D) for DOE actions. The DNFA needs to be submitted to MA-62 for review prior to its approval for actions that exceed the delegated level of authority for the cognizant HCA, or for actions that MA-62 has otherwise selected for review. The GO may not approve a DNFA for an award above his/her authority.

2.1.4 Intergovernmental Review

Executive Order 12372, "Intergovernmental Review of Federal Programs," was issued with the desire to foster intergovernmental partnership and strengthen federalism by relying on State and local processes for the coordination and review of proposed Federal financial assistance and direct Federal development. The Executive Order is implemented at [10 CFR 1005](#). The GO or program official that issues the FOA or program announcement should determine if a review is required. The FOA or program announcement must specify whether a review is or is not required.

2.1.5 Award Reporting Requirements

(A) The DOE TPO is responsible for specifying the required management and scientific/technical reports on the Federal Assistance Reporting Checklist (DOE F 4600.2) and providing this checklist as an attachment to the Requisition. The DOE F 4600.2 and instructions are available at <https://www.energy.gov/management/office-management/operational-management/financial-assistance/financial-assistance-forms> under Award Forms. The TPO and GO should always use the DOE F 4600.2 posted on the above referenced page to ensure that the current version of the form and the instructions are included in the award.

TPOs should consider the scope, complexity, duration of the project, and program legislation, when establishing reporting requirements, and identify any special reporting requirements in the block, entitled “Special Instructions.”

(1) Research, Development, Demonstration (RD&D), and Other Scientific/Technical Awards: RD&D and other scientific/technical awards should generally require periodic Research Performance Progress Reports (RPPRs), Special Status Reports, and a Scientific and Technical Information (STI) resulting from the research, including a final scientific and technical report.

(a) RPPRs are management reports which provide information on project status. These reports are used by the DOE TPOs to monitor the project and to provide early recognition of potential problem areas. These reports should not be sent to the Office of Scientific and Technical Information (OSTI) since these reports are management in nature, and not STI. The frequency of these reports should be the minimum needed to monitor performance. Examples of reporting requirements for typical projects are:

(i) Basic research grants: Generally, these awards would require an annual RPPR, a final scientific/technical report, other forms of STI that are created during the course of the award, and Special Status Reports on an as needed basis.

(ii) Technology development grants: Generally, these awards would require an annual or semi-annual RPPR, a final scientific/technical report, other forms of STI that are created during the course of the award, and Special Status Reports on an as needed basis.

(iii) Large cooperative agreements: Generally, these awards would require quarterly RPPRs, a final scientific/technical report, other forms of STI that are created during the course of the award, and Special Status Reports on an as needed basis.

(b) Scientific/Technical Reporting: Requirements for management of STI resulting from DOE funding are described in DOE O 241.B, Scientific and Technical Information Management. Dissemination of STI resulting from DOE funded research and development programs promotes scientific progress and public understanding and has been a fundamental requirement since the founding of the

Department and its predecessor agencies. A number of laws require the Department to make its information available, while others place some limits on the dissemination of STI for which the unauthorized release would be detrimental to national interests. See <https://www.osti.gov/financial-assistance-recipients> for more information.

(i) Final scientific/technical reports and other STI products provide the results of scientific and technical studies, investigations that relate to research, development, demonstration, and other specialized areas such as environmental and health protection and waste management, enabling the advancement of scientific knowledge and technological innovation.

(ii) Types of STI reports/products should be identified by the GO, in coordination with the PM and should include a Final Scientific/Technical Report (required at Closeout for all RD&D and other scientific/technical awards final peer-reviewed accepted manuscripts of published journal articles (required per the [DOE Public Access Plan](#)), scientific/technical conference papers, presentations and proceedings, scientific/technical software/manuals, data, dissertations/theses, patents, and workshop reports. These are to be identified on the Federal Assistance Reporting Checklist (DOE F 4600.2). While submission instructions are provided as part of the DOE F 4600.2, additional information on types of STI, and procedures for announcement and submission, may be found here: <https://www.osti.gov/stip/stitypes>.

(iii) While the DOE TPO may require a Scientific/Technical Report at the end of a phase (such as in the case of SBIR/STTR), he/she should not require an annual scientific/technical report. For annual project monitoring, RPPRs provide the appropriate management information to monitor progress of the award.

(c) Special Status Reports: Special Status Reports provide notice of problems, delays, or adverse conditions which materially impair the recipient's ability to meet the objectives of the award or have a significantly unfavorable impact on the project.

(2) Non-R&D Awards: A Non-R&D award should generally require only periodic Progress Reports and Special Status Reports. A final Progress Report is usually sufficient to determine whether the objectives of a non-R&D project have been accomplished.

(B) The DOE GO is responsible for:

(1) Incorporating the Federal Assistance Reporting Checklist (DOE F 4200.2) and instructions in the award. This includes:

(a) Ensuring that the DOE TPO selected the minimum management and scientific/technical reports necessary to monitor progress and report results.

(b) Specifying the financial reporting requirements.

(c) Specifying closeout reporting requirements.

(2) Assessing a prospective award recipient's past performance to determine whether the recipient has a history of poor programmatic performance, is financially unstable, has inadequate management systems, or has not complied with the terms of previous awards, including providing the required reports. To determine whether the recipient has submitted the required reports, GO should review (1) local report tracking systems to identify delinquent reports; (2) the Integrated Data Warehouse (IDW) to review overage closeout actions, and/or (3) the Office of Scientific and Technical Information's (OSTI's) E-Link System at <https://www.osti.gov/elink/index.jsp> to identify the STI products that have been announced and submitted by awardees.

(a) If serious or numerous performance deficiencies are found, the GO should deny the award, unless law, regulation, or evaluation/selection criteria dictate otherwise.

(b) When denial of an award based on past performance is not deemed appropriate, the GO should include special award conditions in the award (e.g., use a reimbursement payment method rather than advance funding and establish milestone payments associated with the progress of the work, set aside a portion of the award funding until deliverables are received, or require more frequent financial or progress reporting than otherwise required under the program. Note that 2 CFR Parts 200.327 and 200.328 allow for reporting more frequently than quarterly in unusual circumstances, for example when more frequent reporting is necessary for the effective monitoring of the federal award.

(3) Until such time as the report is submitted, the recipient and the GO may agree that the report can include proprietary data (limited rights data), classified information or information subjects to export control classification.

2.1.6 Project Management

As part of DOE's stewardship responsibilities for its financial assistance awards, GOs and program officials must consider program and project management. While DOE O 413.3, *Program and Project Management for Acquisition of Capital Assets*, does not apply to financial assistance, the basic principles outlined in the order can be applied. These principles include:

- Mission need defined;
- Alternatives to meeting the mission need considered, developed, and evaluated;
- Project objectives defined up front and used to judge project success;
- Project performance risks (technical, financial, and otherwise) identified and mitigated in the implementation strategy;
- Projects managed by qualified individuals;
- Scope, schedule, and budget established for each project; and
- Projects managed and reported against established scope, schedule, and budget.

GOs should be aware of specific program requirements and work with program officials to ensure that FOAs are consistent with these requirements and the above principles. The FOA should include merit review criteria that assess the applicant's abilities to manage projects consistent with the level of risk involved in the project. The FOA template includes a "Project Management Plan" requirement that should be included in the FOA for large research and development projects.

In accordance with 2 CFR 200.207 additional specific award terms and conditions may be required for awards with project performance risks. These could include structuring budget periods around go/no-go decisions, special reporting requirements or payment schedules.

2.2 Funding Opportunity

2.2.1 Funding Opportunity Announcement (FOA)

(A) Preparation

A standard template has been developed for issuing Funding Opportunity Announcements (FOAs). This template follows the standard format adopted by the Office of Management and Budget (OMB) and is required for all FOAs. The DOE templates are located in STRIPES. The STRIPES templates also contain all of the information which the regulations now require to be in the public notice of funding opportunity (See 2 CFR Part 200.203 and Appendix I to 2 CFR Part 200).

Users must create a FOA in STRIPES to get access to the FOA templates. GOs and Project Managers must use the standard DOE template to develop FOAs. Changes or additions to the template should be made selectively, announcement by announcement. At no time, should discretionary changes be made to any portion of the FOA template. Local additions to the terms and conditions should be made only in coordination with the Office of Policy, Contract and Financial Assistance Policy Division (MA-611). Funding Opportunities must identify the correct, current and valid Assistance Listings. See <https://www.beta.sam.gov> to view the current valid DOE Assistance Listings.

(B) Publication

The GO must choose Post to FedConnect when releasing the Funding Opportunity in STRIPES. For reference, the FedConnect address is <https://www.fedconnect.net/Fedconnect/>. Since Grants.gov does not allow Questions and Answers to be posted, there is standard language in the FOA instructing applicants how and where to submit questions and view answers to submitted questions.

As soon as the FOA is released in STRIPES, the GO must create the synopsis to get the opportunity posted to Grants.gov. See the following section (2.2.2) for more information on this process.

2.2.2 Synopsizing the Opportunity

The GO is responsible for ensuring that all discretionary grant and cooperative agreement FOAs and modifications to the announcements are posted to the Grants.gov via the Strategic Integrated Procurement Enterprise System (STRIPES) as soon as the announcement is posted on FedConnect which is the outward facing portion of STRIPES.

The synopsis must have a link to FedConnect for the full announcement.

Only those opportunities that will result in the receipt of applications should be synopsized in Grants.gov. GOs may use Contract Opportunities on beta.sam.gov, Federal Register, FedConnect, or any other means to issue requests for information or similar actions.

2.2.3 Create the Application Package at Grants.gov

Once the synopsis is available under “Manage Opportunities” in Grants.gov, an Application package must be manually created. The document describing how to find the full announcement at FedConnect shall be posted as the application instructions. Creation of the Application package also includes choosing one of DOE’s forms template packages. Applications will be received at Grants.gov and transferred to STRIPES for review and processing.

Since FY 2007, OMB has directed that 100% of FOAs have application packages posted on Grants.gov.

2.3 Applications

2.3.1 Pre-Applications

Pre-applications are a useful tool for obtaining information, providing feedback and reducing the number of poor or non-responsive applications. The program announcement should indicate whether or not pre-applications are required. If pre-applications are required, the program announcement must state that it is a mandatory requirement and describe the content of the pre-application, page limitation, and how the pre-application will be evaluated and used.

2.3.2 Letters of Intent (SEPT 2020)

Letters of Intent are a useful tool for obtaining information during the merit review process, that if required in a program announcement only those applicants that apply would be eligible to submit a full application.

2.3.3 Concept Papers (SEPT 2020)

Concept Papers are brief descriptions of a proposed project which allows applicants to submit their ideas with minimal time and expense. If a Concept Paper is required, the FOA must state that it is a mandatory requirement, provide a due date, and describe what is to be included in the Concept Paper and how it will be evaluated. The FOA must also include instructions on the format and where and how to submit the Concept Paper.

2.3.4 Applications

An application is the written or electronic request for financial assistance to support an idea, method, or approach, submitted by individuals, businesses, and organizations in response to a Government funding opportunity or program announcement. An application is required for all financial assistance projects or programs. In general, the application should include:

- (A) A face sheet containing basic identifying information. The face sheet shall be the Standard Form (SF) 424 or other Government-wide application form;
- (B) A detailed narrative description of the proposed project, including the objectives of the project and the applicant's implementation plan;
- (C) A budget with supporting justification; and
- (D) Any required pre-award assurances.

Instructions on the format and required forms for an application package must be included in the FOA. The FOA must also include instructions on where and how to submit the application.

Since October 1, 2010, applications for new or renewal grants or cooperative agreements, including applications submitted under formula grant programs, must include the applicant's DUNS number and the applicants must be registered in the System for Award Management (SAM).

2.3.5 Unsolicited Proposals (SEPT 2020)

An Unsolicited Proposal is an application for support of an idea, method, or approach, submitted by individuals, businesses, and organizations solely on the applicant's initiative, rather than in response to a DOE funding opportunity or program announcement. Financial assistance awards resulting from unsolicited applications are considered noncompetitive actions.

DOE encourages the submission of unsolicited proposals that will contribute to its mission objectives. The Department considers proposals in all areas of energy and energy-related research and development with emphasis on long-term, high-risk, high-payoff technologies.

An unsolicited proposal may be accepted by DOE if it:

- Demonstrates a unique and innovative concept, or demonstrates a unique capability of the applicant;
- Offers a concept or services not otherwise available to the Government; and,
- Does not resemble the substance of a recently completed, current or pending competitive announcement.

If an unsolicited proposal is accepted, a program official must prepare a DNFA citing the appropriate exception from 2 CFR Part 200.12(c) (See Chapter 2, paragraph 2.1.3)

A detailed booklet titled **Guide for the Submission of Unsolicited Proposals** that outlines the unsolicited proposal process can be accessed at

<https://www.netl.doe.gov/sites/default/files/2017-11/USPGuide.pdf>

All unsolicited proposals must be submitted through the Unsolicited Proposal Manager. For more information, contact the Unsolicited Proposal Manager, John Augustine:

Mail to:

Unsolicited Proposal Manager
U.S. Department of Energy
National Energy Technology Laboratory
P.O. Box 10940, MS 921-107
626 Cochran Mill Road
Pittsburgh, PA 15236-0940

E-mail:

DOEUSP@NETL.DOE.GOV

2.4 Evaluation and Selection

2.4.1 Initial Screening of Applications

Upon receipt of applications, the GO should perform an initial review to determine that:

- (A) the applicant meets the eligibility requirements and is eligible for an award;
- (B) the information and documentation required by the FOA has been submitted;
- (C) all mandatory submittal and eligibility requirements are satisfied; and
- (D) the proposed project is responsive to the objectives of the FOA.

Applications not meeting **all of the requirements** of the FOA should be rejected and the applicant informed of the reason for the application not being evaluated.

2.4.2 Merit and Risk Reviews

(A) Merit

It is DOE policy that all discretionary financial assistance, competitive or noncompetitive, is awarded through a merit-based selection process. Merit review means a thorough, consistent, and objective examination of applications based on pre-established criteria by persons independent of those submitting the applications and knowledgeable in the field of endeavor for which support is requested.

Each Program Office conducting reviews must ensure (1) their merit review implementation policies require an objective merit review of noncompetitive as well as competitive applications, and (2) the policy is implemented for all discretionary financial assistance activities under their cognizance whether conducted in headquarters or at a field activity.

DOE has published the “Department of Energy Merit Review Guide for Financial Assistance and Unsolicited Proposals”. This Guide can be found at <https://energy.gov/management/office-management/operational-management/financial-assistance> under Financial Assistance Policy and Guidance.

(B) Risk/Risk Assessment

As required by 2 CFR Part 200.205, prior to making an award, DOE must review any information available in OMB-designated repositories of Government-wide eligibility qualification or financial integrity information. In addition, for competitive financial assistance, DOE must have in place a framework for evaluating the risks posed by applicants before they receive financial assistance awards. Risk criteria to be evaluated must be contained the FOA.

2.4.3 Program Policy Factors

Program Policy Factors may be used during the selection process to provide for consideration of factors that are not indicators of the application’s merit. The purpose of considering these factors is to maximize the effectiveness of available Government funding and to best achieve DOE program objectives. These factors should be as objective and clearly stated as possible. For example, Program Policy Factors may reflect the desirability of selecting projects based on geographic distribution, diverse approaches, or complementary efforts. Such factors should be specified in the program announcement or program rule to notify applicants that factors essentially beyond their control will affect the selection process. A written justification of the application of the Program Policy Factors should be prepared by the selection official or designated reviewer.

2.4.4 Selection

The Selection Official reviews the Merit Review Summary Statements and Ranking Sheet, applies the Program Policy Factors, and prepares a narrative statement to document the selection of applications to receive funding. The selection statement should address the following items:

- (A) Title and number of the FOA;
- (B) The Summary Statements for the Merit Review;
- (C) The Merit Review Ranking Sheet;
- (D) Justification on the application of Program Policy Factors;
- (E) Identification of selected applications and proposed funding;
- (F) Other information as applicable

2.5 Award Considerations

2.5.1 Budget Review

(A) The budget review is performed after the Selection Official selects those applications to be considered for negotiation of an award. While budget reviews are the responsibility of the GO, the GO should obtain the technical and cost input from the program/project office.

In conducting budget reviews, the GO may obtain pre-award audits or consult cost and/or technical specialists. Audits are not necessary or customary to complete the budget review and negotiate the award. However, audits may be helpful for recipients without approved indirect rates or prior experience obtaining funding from the Federal Government, whether by grant or contract. GOs should consider the cost of the audit in their determination to obtain outside audit services and review the relevant policy.

(B) The budget is a financial plan for the proposed project or program. A budget review is performed to determine whether the proposed activities are supported by adequate resources in this plan. The budget review is the process of verifying cost data, evaluating specific elements of the budget, examining data to determine allowability, allocability and reasonableness, and determining that proposed costs are consistently treated in accordance with generally accepted accounting principles and applicable cost principles. A budget review is not conducted in accordance with the proposal analysis requirements for cost and pricing data in FAR 15.404.

The extent of the budget review should not be determined solely on the basis of the amount of funds requested. Instead, it should performed should be based on recent past experience with the prospective recipient; the size, nature and complexity of the project; information

provided by the technical reviewers; and other known factors that may affect the organization's financial capabilities to operate under the award.

Subrecipients' budgets should be reviewed as part of the applicant's budget. Costs for contracts need to be reviewed only to ensure that the applicant meets applicable procurement standards. If the applicant's procedures are not adequate, the GO should perform an in-depth review.

(C) TPOs must prepare a technical evaluation of the budget. This evaluation should provide a comparison between the budget and the project narrative. An independent cost estimate may also be developed for the proposed project. An independent estimate may be particularly helpful for large demonstration projects.

(D) The following is a list of questions to be considered in performing the budget review. The list is not intended as a checklist but questions prompting analysis by the GO. The review should be documented in a written narrative. The checklist may not be included as a form for applicants to complete and submit with their application.

(1) General

- a. Is the total project cost reasonable for the effort?
- b. Are all costs proposed in accordance with any limitations, exclusions or special conditions set forth in the funding opportunity announcement?
- c. Are all costs proposed in accordance with generally accepted accounting principles and the applicable costs principles?
- d. Are all costs allocable and allowable?
- e. Have the applicant's proposed indirect rates been audited and approved?
- f. Has fee or profit been included in the project cost?
- g. Is the applicant in a partnership or consortium? If yes, have the relationships among each member been described and are all included in the budget?

(2) Personnel

- a. Have individuals or positions been identified?
- b. Are time commitments for individuals and/or positions stated? Are they reasonable?
- c. Are the time commitments less than 100%?
- d. Do the levels of personnel (experience/skill/education, etc.) correspond to the project description? Will the personnel be able to successfully perform the project?

e. Is the compensation consistent with that paid similarly skilled employees internal and external the applicant organization?

(3) Travel

a. Is travel authorized under the award?

b. Are the proposed trips identified and a purpose indicated?

c. Are the proposed trips reasonable in number for the purpose(s) stated?

d. Are the number of people traveling on each trip reasonable?

e. Are less expensive methods such as video conferencing, webcasts or conference calls available?

f. Are the travel costs consistent with the applicant's established travel policy? (Remember applicants do not have to conform to federal per diem rates and are not eligible for federal rates on airfare or at hotels.)

g. If business or first-class airfares are included, have they been sufficiently justified to determine reasonableness?

(4) Equipment

a. Is the purchase of equipment authorized under the award?

b. Is the unit cost for each item to be purchased clearly indicated?

c. Is the need for the equipment adequately justified?

d. Are the cost estimates for equipment purchases reasonable?

(5) Contracts

a. Have the goods or services to be acquired been described?

b. Do the costs appear reasonable?

c. Are the goods or services procured in accordance with the applicable Procurement Standards in 2 CFR Parts 200.317 to 200.326? (The applicant, not DOE, is responsible for justifying the acquisition and costs of contracts. The CO needs to determine whether the applicant has followed the appropriate procedures. Audits and detailed analysis are not required.)

2.5.2 Financial Management Assessment

A financial management assessment should be undertaken by the GO to assess the applicant's ability to manage the financial aspects of an award and its plans to accomplish project activities with reasonable economy and efficiency. The standards for acceptable financial management are found at 2 CFR Part 200.302. This assessment should take place when:

- (1) DOE has not previously funded the organization;
- (2) The applicant is a newly organized concern; or
- (3) The organization is known or suspected to have operational and/or financial difficulties or inadequacies.

If an assessment is undertaken, it should be based on the standards in 2 CFR Part 200 and include a review of:

- (1) The applicant's accounting system to determine whether it is adequate for the accumulation and segregation of costs on a project-by-project basis and whether its books of account are adequate for and suited to the organization's business;
- (2) The applicant's purchasing procedures to determine if they exist in written form and whether they result in effective, economical, and well-documented procurement;
- (3) The applicant's personnel practices and procedures to determine if they exist in written form, whether they provide for adequate separation of responsibilities for hiring, dismissal, promotion, etc., and whether the organization can meet the cost principle standards for documenting its payroll;
- (4) The existence and adequacy of other written procedures governing travel, use of consultants, and property management;
- (5) The organizational structure and assignment of functional responsibilities to determine whether the organization can adequately safeguard its assets provide accurate and dependable financial and cost data, and whether employees can adequately discharge their responsibilities and adhere to established policies.

In addition, a business review of the application should be undertaken to:

- (1) Determine the allowability, allocability and reasonableness of proposed costs (both Federal and non-Federal funds) based on applicable cost principles and program regulations, including consistent treatment of proposed costs.
- (2) Determine if a cognizant Federal agency has established an indirect cost rate. If a rate is not available, additional reviews will be required to evaluate, negotiate and determine an appropriate rate.

- (3) If cost sharing is required, review the source and amount of the proposed contribution and assess the likelihood of the applicant being able to provide the required cost sharing.
- (4) Review applicant's plans for contracts and subawards.

In those cases where applicants are unable to comply with the financial management standards or the business review indicates problems or a lack of understanding of costs issues, the GO may determine that the applicant is high risk and incorporate specific terms and conditions into the award. See Subchapter 2.5.4 for information on high risk recipients.

2.5.3 Determination of Responsibility

Prior to making award, GOs must make an affirmative determination of responsibility. This determination includes the financial management assessment and business review discussed above in paragraph 2.5.2, review of audits under the Single Audit Act, and review of activities under previous awards, especially submission of required reports.

Applicants should be screened for responsibility after selection and before award. The extent of this screening depends on if DOE has any prior experience; e.g., a favorable credit determination for the past three years or an on-going favorable relationship with the applicant.

The responsibility determination considers if the contractor has the administrative and programmatic capabilities to perform.

The term "*administrative capability*" means the capability of an applicant or recipient to develop and implement administrative systems required by 2 CFR 200 as incorporated by 2 CFR 910, including systems related to financial management, property management, procurement standards, financial reporting, record-keeping, and submission of administrative reports/certifications for grant closeout.

The term "*programmatic capability*" means the technical capability of an applicant or recipient to successfully carry out a project taking into account such factors as the applicant's:

- (1) Performance in successfully completing federally and/or non-federally funded projects similar in size, scope, and relevance to the proposed project;
- (2) History of meeting reporting requirements on prior or current assistance agreements with federal and/or non-federal organizations and submitting acceptable final technical reports;
- (3) Organizational experience and plans for timely and successful achievement of the objectives of the project; and
- (4) Staff expertise/qualifications and resources or the ability to obtain them, to successfully achieve the goals of the project.

2.5.4 High Risk Recipients

GOs may discover, while assessing risk and responsibility, that a potential recipient exhibits factors that indicate a high degree of risk in the successful completion of the award. The following factors are examples of and tend to indicate high risk:

- (1) Poor financial stability (i.e., insolvency or threat of insolvency).
- (2) Inexperience such as may occur in newly formed organizations or in those which have not previously received Federal financial assistance awards.
- (3) Financial dependence on Federal support (i.e. 80% or more of the organization's revenues are expected to be derived from Federal awards in the forthcoming year).
- (4) Serious deficiencies in program or business management systems (e.g., substantial failure to comply with the financial management standards or procurement standards in 2 CFR Part 200).
- (5) A history of unsatisfactory performance, material violations of award terms and conditions, or large cost disallowances on previous awards from the same or other Federal programs.

GOs should consider incorporating specific award conditions of a programmatic and/or administrative nature if an organization exhibits one of these risk factors in accordance with 2 CFR 200.207. The potentially adverse impact of a particular specific condition(s) on an awardee's ability to carry out the program must be considered and be balanced with the need to protect the Government's interests. Any special conditions shall be promptly removed once the conditions that prompted them have been corrected. Specific award condition(s) may include, but are not limited to, one or more of the following, as appropriate for the specific award or awardee:

- (1) Use of a reimbursement payment method rather than advance funding.
- (2) More frequent financial or progress reporting than otherwise required.
- (3) Technical assistance from DOE or access to additional resources from DOE.
- (4) Required insurance or bonding on construction awards.

2.5.5 Payment Methods

Payment may be made by either advance or reimbursement. The determination of the payment method is dependent upon the results of the financial management assessment. As specified in 2 CFR Part 910.354, reimbursement is the preferred method of payment for For-Profit organizations. Advance payment, via the Treasury Department's [Automated Standard Application for Payment](#) (ASAP) system, is the preferred method of payment for grants and cooperative agreements with Non-Profits, universities and hospitals. Advance payment may be made only if the minimum standards in 2 CFR Part 200.305 are met. The GO may

determine that payment by reimbursement is appropriate if special conditions are applicable to the award. This must be determined on a case-by-case basis.

2.5.6 Cost Sharing (SEPT 2020)

A Department-wide cost sharing requirement was established by Section 988 of the Energy Policy Act (EPAAct) of 2005 for most research, development, demonstration, and commercial application activities initiated after the date of enactment of EPAAct 05 (August 8, 2005).

This requirement is also set forth at 2 CFR 910.130. The Secretary has been granted the authority to reduce or eliminate cost sharing requirements for applied research and development as necessary and appropriate. The Secretary may reduce, but not eliminate, cost sharing requirements for demonstration and commercial application activities as necessary and appropriate, taking into consideration any technological risk relating to the activity. Basic and fundamental research activities may be excluded from cost sharing requirements upon determination of an appropriate officer of DOE, generally an Under Secretary.

Specific programs may be subject to alternative cost sharing requirements as set forth in their authorizing statutes. Contracting officers should consult with legal counsel regarding applicable cost sharing requirements.

(A) Applicability

The cost sharing requirements of Section 988 applies to Research and Development; Demonstration; Commercialization activities; grants and cooperative agreements; agreements under the Other Transactions Authority (OTA) of Section 1007 of EPAAct 05; and contracts and task orders. This requirement also applies to renewal awards for grants and cooperative agreements.

The requirements of Section 988 do not apply to: (1) a cooperative research and development agreement under the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3701 et seq.); (2) a fee charged for the use of a Department facility; (3) an award under the Small Business Innovation Research (SBIR) program or the Small Business Technology Transfer (STTR) program; or (4) Management and Operating (M&O) contracts.

The Department of Energy Research and Innovation Act (RIA or ACT), Pub. L. No. 115-246, was enacted on September 28, 2018. Section 108, Short-Term Cost-Share Pilot Program, of the Act amends Section 988 of the EPAAct 2005 to exempt Institutions of Higher Education (IHEs) and Non-Profit Institutions/Organizations (NPOs) from the minimum 20% cost-sharing requirements for a research or development activity that is not of a basic or fundamental nature for a two-year period ending September 27, 2020.

Therefore, during the two-year pilot program, the Secretary is not required to sign a waiver to reduce or eliminate the cost sharing requirement for research and development activities of an applied nature for IHEs or NPOs. Although Section 108 removes the minimum statutory cost share requirement for IHEs and NPOs without requiring a waiver, it does not affect

DOE's ability to impose a non-statutory, policy-based cost sharing requirements on these or other recipients or contractors.

(B) GO Responsibilities

(1) *FOAs and Award Agreements:*

GOs shall include the required cost sharing requirement and information in any FOA for research and development, demonstration, and commercial application programs and activities.

GOs should incorporate the cost sharing requirement and the agreed upon cost share amount (dollar or percentage) in all grant, cooperative agreement, and technology investment agreement awards for research and development, demonstration, and commercial application programs and activities.

(2) *Calculation of Amount*

In accordance with section 988 (d), Calculation of Amount, when calculating the amount of the non-Federal contribution, the GO:

(a) May include the following costs as allowable in accordance with the applicable cost principles:

(i) cash;

(ii) personnel costs;

(iii) the value of a service, other resource, or third party in-kind contribution determined in accordance with the 2 CFR Part 200.306 and the Cost Principles of 2 CFR Part 200, Subpart E;

(iv) indirect costs or facilities and administrative costs; or

(v) any funds received under the power program of the Tennessee Valley Authority (except to the extent that such funds are made available under an annual appropriation Act); and

(b) Shall not include:

(i) revenues or royalties from the prospective operation of an activity beyond the time considered in the award;

(ii) proceeds from the prospective sale of an asset of an activity; or

(iii) other appropriated Federal funds.

The terms and conditions of the contract, grant, or other agreement should include appropriate provisions on cost allowability.

(C) Royalties and Repayment

The Federal share of a cost shared activity under section 988 shall not be required to be repaid as a condition of award. Royalties should not be used to repay or recover the Federal share, but may be used as a reward for technology transfer activities.

(D) Reduction and Exclusion

Section 988 generally requires a cost share of not less than 20 percent for research and development and not less than 50 percent for demonstration and commercial application activities. The percentage of cost share may be reduced or eliminated according to the following standards:

(1) *Research or Development Activities of a Basic or Fundamental Nature* – If an appropriate officer of the Department determines that a research or development activity is of a basic or fundamental nature, then the activity is excluded from the cost sharing requirement.

(2) *Research or Development Activities of an Applied Nature* - The Secretary may reduce or eliminate non-Federal cost sharing if he/she determines that the reduction is necessary and appropriate.

(3) *Demonstration or Commercial Application* – The Secretary may reduce non-Federal cost sharing if he/she determines the reduction to be necessary and appropriate, taking into consideration any technological risk relating to the activity.

2.5.7 Competition and Merit Review

(A) Section 989 of EAct 05 requires competitive awards to involve competitions open to all qualified entities within one or more of the following categories of organizations:

- (1) Institutions of higher education.
- (2) National Laboratories.
- (3) Non-Profit and For-Profit private entities.
- (4) State and local governments.
- (5) Consortia of entities described in paragraphs (1) through (4).

(B) Any award of funds for programs authorized under EAct 05 or an amendment made by this Act, whether competitive or non-competitive, shall be made only after an impartial review of the scientific and technical merits of the proposal(s)/applications(s).

For financial assistance and technology investment agreements, such review should be accomplished through a merit review process that aligns with the DOE Merit Review Guide for Financial Assistance and Unsolicited Proposals and the applicable regulations on financial assistance and other transactions authority, including 2 CFR Part 200 as amended by 2 CFR Part 910.

(C) For purposes of this subchapter, National Laboratories are those defined by Section 2 of EAct 05 as any of the following laboratories:

- (1) Ames Laboratory.
- (2) Argonne National Laboratory.
- (3) Brookhaven National Laboratory.
- (4) Fermi National Accelerator Laboratory.
- (5) Idaho National Laboratory.
- (6) Lawrence Berkeley National Laboratory.
- (7) Lawrence Livermore National Laboratory.
- (8) Los Alamos National Laboratory.
- (9) National Energy Technology Laboratory.
- (10) National Renewable Energy Laboratory.
- (11) Oak Ridge National Laboratory.
- (12) Pacific Northwest National Laboratory.
- (13) Princeton Plasma Physics Laboratory.
- (14) Sandia National Laboratories.
- (15) Savannah River National Laboratory.
- (16) Stanford Linear Accelerator Center.
- (17) Thomas Jefferson National Accelerator Facility.

Section 989 provides authority for DOE COs to permit the National Laboratories, which are otherwise precluded from responding to a Federal Request for Proposal (RFP) (FAR 37.017-1), to submit a proposal in response to an RFP. Section 989 also provides authority for DOE to include the National Laboratories as eligible recipients under Financial Assistance FOAs. As such, Program Officials need to decide whether a particular opportunity authorized under EAct is appropriate for participation by the National Laboratories and discuss the issue with the cognizant DOE CO for the Lab. The RFP or FOA must indicate whether or not National Laboratories are eligible to compete.

Nothing herein obviates the requirement for a contractor operating a national laboratory to obtain DOE approval prior to responding to an RFP/FOA which would require the use of DOE facilities in performance of the statement of work. All RFPs/FOAs that allow the National Laboratories to compete shall be submitted to the Office of Contract Management (MA-62) for DOE, or the Office of Acquisition Management (NA-63) for NNSA, for review, unless such review is waived by the cognizant office.

(D) Additional Considerations

(1) *Conflict of Interest*

DOE Program Officials and GOs need to consider conflicts of interest when determining if Labs are eligible to compete in accordance with Section 989. Conflicts of interest may exist due to previous efforts performed by the Labs or assistance provided in program direction and other mission related activities.

A request for Labs to identify potential conflicts should be included in the FOA. The award file should include a written determination that no conflicts exist or conflicts have been satisfactorily mitigated prior to award to a Lab.

(2) *Pre-Award Costs*

DOE Labs are not authorized to incur or be reimbursed for pre-award costs. Labs should not incur costs, other than Bid and Proposal costs, prior to receipt of a Work Authorization as described under the DOE Order on the Work Authorization System. It is currently [DOE O 412.1A](#).

(3) *Bid and Proposal Costs*

Bid and proposal costs should be handled in accordance with DEAR 970.3102-05-18 and the Labs' standard accounting procedures.

(4) *Merit Review Criteria*

Merit review criteria must be crafted to ensure that the information requested for review does not provide an unfair advantage to the Labs due to their unique relationship with DOE. For example, facilities and equipment may provide an advantage to the Labs because of this unique relationship. Care must be taken to make the merit review criteria as fair and objective as possible. If necessary, state in the FOA how any advantages would be mitigated during the evaluation and selection phases.

Merit review criteria should not include consideration of cost or cost share if Labs are eligible under an FOA. Cost and/or cost share should only be considered in the selection decision.

(5) *Award Document/Terms and Conditions*

Award to a DOE Lab under an FOA is made against their existing prime contract with the Department through the Work Authorization System as outlined in the DOE Order (Currently order DOE O 412.1). DOE O 481.1, Strategic Partnership Projects, is not applicable. A new grant, cooperative agreement, contract, or technology investment agreement should not be awarded. DOE Labs remain bound by the terms and conditions of their contract with DOE.

(6) *Approvals*

A DOE Lab must obtain the approval of their cognizant DOE CO to submit an application under a FOA. The approval must be in writing and submitted with the application. The following wording is recommended for this authorization:

Authorization is granted for the _____ Laboratory to submit an application for the proposed project. The Project proposed is consistent with or complimentary to the missions of the laboratory and will not adversely impact the execution of the DOE assigned programs at the laboratory.

2.5.8 Eligibility Requirements

Section 2306 of EAct 1992 established eligibility requirements for companies that receive financial assistance under titles XX through XXIII of that Act. The terms of Section 2306 are limited to those activities specifically authorized under XX through XXIII. In August 2005, Congress passed EAct 2005, which established a new set of Departmental priorities. In establishing these new priorities, EAct 2005 did not include a specific sunset provision for EAct 1992, nor did it include a similar eligibility requirement except for certain specific programs. In fact, Section 1005 of EAct 2005 requires the Secretary to carry out research, development, demonstration and commercial application projects authorized by the Act in accordance with the provisions of previous Acts, including EAct 1992. Therefore, the eligibility requirements of EAct 1992 must still be considered for activities authorized under that statute.

2.5.9 Intellectual Property Considerations

In order to promote more uniformity in financial assistance patent and data rights requirements, GC-62 and Field Patent Counsels have developed standard sets of IP provisions for the various types of financial assistance awards. These IP provisions are located at <https://www.energy.gov/gc/standard-intellectual-property-ip-provisions-financial-assistance-awards>.

The DOE-wide announcement template in STRIPES provides a link to the GC web site where the IP provisions are maintained. Thus, awarding offices are not required to include the various patents and data rights provisions in announcements of funding opportunities. Applicants are able to access the IP requirements by clicking the link in the announcement.

The GO must:

- (1) Ensure that appropriate patent and data provisions are included in an award.
- (2) Consult with Patent Counsel if the applicable standard set of IP provisions is not appropriate or if there are unique mission requirements.
- (3) Negotiate, in consultation with Patent Counsel and the DOE/NNSA Project Director, special patent and data terms and conditions if necessary to satisfy the mission requirements of a particular program.

(4) Ensure that the Final Invention and Patent Report, if required, are identified on the Federal Assistance Reporting Checklist in the award and are submitted to DOE.

2.5.10 Fixed Amount Awards

As provided in 2 CFR Part 200.45 and 2 CFR Part 200.201(b), Fixed Amount Awards, DOE GOs may make grants and cooperative agreement awards on a fixed amount basis for awards that do not require Federal monitoring or reviewing of actual costs incurred. Accountability of fixed amount awards is based on primarily on performance and results.

The proposed recipient should submit a budget and sufficient documentation to allow the GO to determine that the amount requested is fair and reasonable for the project description and the deliverable(s) identified. A written analysis should be made on the allowability, allocability and reasonableness of the budget. The award document should indicate only the total dollar value approved. No budget should be included in the agreement; however any special restrictions due to budget concerns should be documented in the agreement.

Fixed amount awards may not include mandatory cost share.

2.5.11 Program Income

Program income means gross income earned by the Recipient that is directly generated by a supported activity or earned as a result of the award (see 2 CFR Parts 200.80, 200.307 and 200.407). Program income includes, but is not limited to, income from fees for services performed, the use or rental of real or personal property acquired under Federal awards, the sale of commodities or items fabricated under a Federal award, license fees and royalties on patents and copyrights, and interest on loans made with Federal award funds. Interest earned on advances of DOE funds is not program income.

2 CFR Part 200.307 specifies how program income is to be used. If the terms and conditions of the award do not otherwise specify or prior written approval is not provided, 2 CFR 200.307(e)(1) must apply. For Federal awards made to Institutions of Higher Education (IHEs) or Non-Profit research institutions, if the terms and conditions of the award do not otherwise specify, 2 CFR 200.307(e)(2) must apply.

2.5.12 Lobbying

As a general rule, Federal funds may not be used to support lobbying activities. Costs for lobbying activities are unallowable costs. Care should be taken so that funds are authorized only for eligible activities. Eligible activities include those activities that describe and promote the understanding of scientific and technical aspects of specific energy technologies. Ineligible activities include those activities that encourage or support political activities such as the collection and dissemination of information related to potential, planned, or pending legislation.

Applications shall be reviewed to ensure that inappropriate lobbying activities are not proposed. Applications that contain ineligible lobbying activities shall not be funded.

GOs shall ensure that the FOA includes link to government-wide National Policy Requirements which are posted to the NSF web site, the current version is at: https://www.nsf.gov/bfa/dias/policy/fedrtc/appendix_c.pdf

2.5.13 NEPA/Environmental Considerations

The program/project office and the contracting office should coordinate any FOAs, solicitations or new awards for projects with an expected environmental, health or safety impact with Environmental, Health, Safety & Security (EHS&S) staff to ensure the action will comply with National Environmental Policy Act (NEPA) and other EHS&S requirements. It is also incumbent upon the applicant to identify in its application any potential adverse impacts which may result from project activities. When appropriate, applications should be reviewed for compliance with NEPA procedural requirements at 10 CFR 1021.

2.5.14 SAM and Unique Identifier Requirements (SEPT 2020)

In accordance with 2 CFR 25, each FOA must require that applicants:

- (1) Be registered in the SAM prior to submitting an application or plan;
- (2) Maintain an active SAM registration with current information, including information on a recipient's immediate and highest level owner and subsidiaries, as well as on all predecessors that have been awarded a Federal contract or grant within the last three years, if applicable, at all times during which it has an active Federal award or an application or plan under consideration by a Federal awarding agency; and
- (3) Provide its unique entity identifier in each application or plan it submits to the Federal awarding agency.

DOE may not make an award or financial modification to an existing Federal award to an applicant or recipient until the entity has complied with the requirements described in 2 CFR 25.200 to provide a valid unique entity identifier and maintain an active SAM registration with current information (other than any requirement that is not applicable because the entity is exempted under 2 CFR 25.110).

At the time DOE is ready to make an award, if the intended recipient has not complied with an applicable requirement to provide a unique entity identifier or maintain an active SAM registration with current information, DOE:

- (1) May determine that the applicant is not qualified to receive a Federal award; and
- (2) May use that determination as a basis for making a Federal award to another applicant.

2.5.15 Subaward Requirements (SEPT 2020)

(A) *SAM and Unique Identifier Requirements*

Sub-awardees at all tiers must have an active SAM registration with current information and provide its unique entity identifier to the Prime Recipient before receiving a sub-award.

(B) *Subaward and Executive Reporting*

Since October 1, 2010, prime recipients must register with the new Federal Funding Accountability and Transparency Act (FFATA) Subaward reporting System (FSRS) database and report the required data on their first tier subawardees. Prime recipients must report the executive compensation for their own executives as part of their registration profile in SAM. These administrative requirements are necessary for DOE grants and cooperative agreements to comply with the Federal Funding and Transparency Act of 2006 (FFATA). The requirements are contained in [2 CFR Part 170](#).

2.5.16 Organizational Conflicts of Interest (SEPT 2020)

If the non-Federal entity has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, the non-Federal entity must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest are those where, because of relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable or appears to be unable to be impartial in conducting an award or procurement action involving a related organization.

The non-Federal entity must disclose in writing any potential conflict of interest to the DOE GO. If the effects of the potential or actual conflict of interest cannot be avoided, neutralized, or mitigated before award, the entity must recuse themselves from participating in the award. Where there is an organizational conflict, the prospective non-Federal entity is not eligible for the award.

If a potential or actual conflict of interest is identified after award and the effects cannot be avoided, neutralized or mitigated, the Federal awarding agency will terminate the award unless continued performance is determined to be in the best interest of the Federal government.

2.5.17 Financial Conflicts of Interest (SEPT 2020)

(A) Prime Recipient

A Financial Conflict of Interest (FOCI) exists when the recipient's designated official(s) reasonably determines that an investigator's significant financial interest could directly and significantly affect the design, conduct, or reporting of the agency related project.

In order to comply with a potential FOCI:

- The Prime Recipient must have a written and enforced administrative process to identify and manage Financial Conflicts of Interest (FCOI) with respect to all agency related projects for which DOE funding is sought or received;
- The Prime Recipient must promote and enforce compliance with the regulation's requirements including those pertaining to disclosure of Significant Financial Interests;
- The Prime Recipient must identify and manage FCOIs and provide initial and ongoing FCOI reports to the DOE GO; and
- When requested, the Prime Recipient will promptly make information available to the DOE GO relating to any disclosure of financial interests and the Prime's review of, and response to, such disclosure, whether or not the disclosure resulted in the Prime's determination of an FCOI.

(B) Subrecipients

The Prime Recipient is responsible for ensuring any subrecipients compliance with the regulation and reporting identified financial conflicts of interests for subrecipient Investigators to the DOE GO. Prime Recipient's must incorporate as part of a written agreement with a subrecipient terms that establish whether the Financial Conflict of Interest policy of the Prime Recipient Institution or that of the subrecipient will apply to subrecipient Investigators and include time periods to meet disclosure and/or Financial Conflict of Interest (FCOI) reporting requirements.

Subrecipients who rely on their Financial Conflict of Interest policy must report identified financial conflicts of interests to the awardee Institution/Organization in sufficient time to allow the awardee Prime Recipient to report the Financial Conflict of Interest to the DOE GO to meet its reporting obligations.

Subrecipients that must comply with the Prime Recipient's policy must submit all Investigator disclosures of Significant Financial Interests to the Prime Recipient in sufficient time to allow the awardee to review, manage and report identified FCOIs to the DOE GO.

2.6 Congressional Notifications (SEPT 2020)

This chapter supplements other more primary policies and should be considered in the context of those. This chapter discusses the requirements and procedures for providing Congressional Notice for certain financial assistance actions. Advance notifications of financial assistance actions and termination of financial assistance awards are required at specific dollar thresholds.

(A) Office of Primary Responsibility

Congressional notifications are overseen and issued by the DOE Office of Congressional and Intergovernmental Affairs (CI) to Members of Congress when DOE activities will likely affect their constituents. GOs should refer to the CI “Guide for Congressional and Intergovernmental Notifications” for specific thresholds, requirements and procedures.

(B) Special Notifications

This chapter does not address special notifications required by fiscal year appropriations commonly referred to by the department as “Section 301b and 311 Congressional Notifications.” For the latest requirements of these notifications see the DOE Acquisition Letter webpage <https://www.energy.gov/management/acquisition-letters>. Please be aware that notifications under Sections 301b and 311 do not exclude the notifications covered in this chapter. You may have to report more than once for the same action. This situation is primarily due to overlapping dollar thresholds, but also may arise under circumstances requiring special notification.

(C) Advance Notification of Award System (ANA)

ANA is an automated DOE system used to process Congressional notifications of routine financial assistance actions (award or modification) of \$2 million or more. This process utilizes the existing data in the Strategic Integrated Procurement Enterprise System (STRIPES) which provides the data to ANA as a part of the iPortal (<https://iportal.doe.gov>). The iManage ANA User Guide is at the iPortal website and all Users must have an active account in order to retrieve the ANA User Guide. If a User has an active iPortal account the ANA User Guide can be accessed directly at: <https://devapex.doe.gov/pls/apex/f?p=4550:1:9122716836392:::::> and select the Shortcut under Corporate Online Services.

For step by step guidance see the “Advanced Notifications of Awards (ANA) User Guide” issued January 15, 2019. If Users do not currently have access to iPortal, please follow the instructions at <https://energy.gov/management/downloads/request-iportal-account>. If Users require further assistance in establishing an iPortal, please contact the iManage help desk at 301-903-2500. If a User needs to request an ANA account please request one through the CBS help desk at CBSHelpDesk@hq.doe.gov.

2.7 D2 DAIMS / FFATA / USASpending.gov (SEPT 2020)

In 2015, the Office of Management and Budget (OMB) and the Treasury Department finalized the data standards and definitions needed for the standard reporting process and used these to create the DATA Act Information Model Schema v1.0 (DAIMS). STRIPES has been updated to allow users to create and submit the new D2 DAIMS records for Financial Assistance (FA)

documents and to allow FA Administrators to extract the FA records in the D2 DAIMS format for submission to Financial Assistance Broker System (FABS).

USASpending.gov is the central source of data on awards made under domestic assistance programs of the Federal government. See the CFDA chapter of this guide for further details on domestic assistance programs (CFDA/Assistance Listings).

DOE collects the FA data to be sent to USASpending.gov using the D2 DAIMS Screen in STRIPES. D2 DAIMS data is extracted from STRIPES and transmitted to FABS. It is important that the FA data entered on the D2 DAIMS screen in STRIPES be correct since this is the data that will be stored in the IDW for internal and external reports and will also be sent to USASpending.gov to be used by Congress and shared with the public. Many fields on the D2 DAIMS screen are pre-populated from the data included in the award and should only be changed if any pre-populated data is invalid. The invalid data should be corrected when the award is being modified unless a Data Call correction is requested of the GO. A correction to the D2DAIMS page would be required to update only the appropriate fields within the Data Call request.

All information in the base FA award as well as any modifications made to FA awards are reported to USASpending.gov.

CHAPTER 3 – AWARD

3.1 Assistance Agreement Form/Terms and Conditions

DOE developed Special Terms and Conditions for Use in Most Grants and Cooperative Agreements and Federal Assistance Reporting Checklist and Instructions that are to be used along with the Federal-Wide Research Terms and Conditions and National Policy Requirements in order to promote more uniformity in DOE and NNSA financial assistance awards.

To ensure that financial assistance awards contain appropriate award terms and conditions the GOs must:

- (A) Use the Assistance Agreement form generated by STRIPES.
- (B) Ensure that the ‘National Policy Assurances To Be Incorporated As Award Terms’ are incorporated by reference in financial assistance awards to domestic organizations. GOs, with the assistance of their legal counsel, may modify the national policy terms, if an award is made to a foreign entity.
- (C) Ensure that the appropriate standard Special Terms and Conditions are included in financial assistance awards.

(D) Negotiate additional special award terms (specific conditions) if necessary to satisfy the mission requirements of a particular program or to address responsibility and risk concerns (e.g., a recipient is not financially stable, has a history of poor performance, has a management system that does not meet the standards prescribed, or is not otherwise responsible).

(E) Ensure that the DOE Form 4600.2, Federal Assistance Reporting Checklist and Instructions, is included in all financial assistance awards, unless there is a program rule that specifies other reporting requirements. GOs may add additional reporting requirements and instructions if necessary to satisfy specific program requirements or to address responsibility and risk concerns.

Links to the current Special Terms and Conditions and the Federal Assistance Reporting Checklist and Instructions (DOE F 4600.2) can be found at:

<https://energy.gov/management/office-management/operational-management/financial-assistance/financial-assistance-forms> under AWARD TERMS and AWARD FORM.

The standardized Federal-Wide Research Terms and Conditions, DOE Specific Research Terms and Conditions, and the National Policy Assurances are posted at:

https://www.nsf.gov/bfa/dias/policy/fedrtc/appendix_c.p.

3.2 Pre-Award Costs

Pre-award costs are those incurred prior to the effective date of the Federal award directly pursuant to the negotiation and in anticipation of the Federal award where such costs are necessary for efficient and timely performance of the approved project. Such costs are allowable only to the extent that they would have been allowable if incurred after the date of the Federal award and only with the written approval of the GO.

As specified in 2 CFR Part 200.308, all costs incurred before DOE makes the award are at the recipient's risk (i.e. DOE is under no obligation to reimburse such costs for if for any reason the recipient does not receive a Federal award or if the Federal award is less than anticipated and inadequate to cover such costs). In accordance with 2 CFR 200.308(d)(4) the requirement of prior approval for the pre-award costs up to 90 days is automatically waived for research awards unless otherwise specified in their award.

When the recipient is an institution of higher education, hospital, or non-profit organization, requests for approval of pre-award costs for periods exceeding 90 calendar days prior to award will be considered, provided the requests are made in writing in advance to the GO.

As stated above, pre-award expenditures are always made at the recipient's risk.

The effective date of the award is the date specified in block 3 on the Assistance Agreement. If no effective date is specified, then the beginning date of the project period for the new award is the effective date of the Assistance Agreement. Renewal awards should specify an effective date

for pre-award cost purposes; generally the date of renewal award, not the date when the budget/project period starts.

3.3 Period of Performance and Budget Period (SEPT 2020)

3.3.1 Period of Performance

As defined in 2 CFR part 200.77, Period of performance means the time during which the non-Federal entity may incur new obligations to carry out the project or work authorized under the Federal award. DOE must include start and end dates of the period of performance in the Federal award.

The period of performance is the period of time established in the financial assistance award during which Federal financial assistance begins and ends. The end date of the period of performance is the award expiration date. The initial award period of performance for both grants and cooperative agreements should generally be no longer than five (5) years in length, unless a longer period of performance is approved one level above the GO prior to making the award. A determination and findings should be included in the award file that provides justification that the longer period of performance is necessary for the success of the project if the original or extended period of performance is longer than 5 years.

3.3.2 Budget Period

The budget period is the interval(s) of time, specified in the financial assistance award, into which the period of performance is divided for budgetary purposes. Typically, budget periods are established on an annual basis. In some cases, shorter or longer budget periods may be established for compelling programmatic or administrative reasons, such as to allow for project phases not evenly divisible with 12-month increments or to provide program personnel with logical decision points to evaluate whether the project should proceed. Periods of performance less than 12 months should have a co-extensive budget period and period of performance.

3.4 Post-award Orientation

A post-award orientation is a letter or meeting between DOE and the Recipient to communication roles and responsibilities under an award. Meetings are especially appropriate for new recipients or for large, complex awards however the appropriate level of communication should be commensurate with the project dollar amount, complexity, risk and experience of the recipient. The GO should set up the meeting with the recipient and include appropriate government officials such as the DOE TPO, legal counsel, patent counsel, environmental officers, and property officials. Areas for discussion include project objectives and milestones, reporting requirements and due dates, cost share and payment procedures, special terms and

conditions, prior approval requirements, special restrictive conditions, and any other topics that would aid in award administration. If the award is a cooperative agreement, the Statement of Substantial Involvement should be reviewed during the meeting to clarify each party's responsibilities for the project.

CHAPTER 4 – ADMINISTRATION

4.1 Monitoring Project Performance

4.1.1 Federal (DOE) Responsibilities

It is DOE policy to limit involvement between itself and the recipient in the performance of a project to the minimum necessary to achieve program objectives and ensure conformance with requirements of the grant or cooperative agreement. DOE's role is that of a partner where the Government provides the financial assistance and the recipient carries out the project activities.

Monitoring is a process whereby the programmatic progress and financial and business management aspects of a financial assistance award are reviewed by accessing and assessing information gathered from program and financial reports, site visits, teleconferences, and other means. DOE requires financial assistance recipients to have adequate management systems to ensure that project objectives are met and funds are properly spent. To the extent possible, financial assistance award monitors rely on the management systems of the financial assistance recipients to meet project objectives, comply with award terms and conditions, and account for funds.

4.1.2 Recipient Responsibilities

A recipient has full responsibility for the conduct of the project or activity supported and for the results achieved. The recipient should monitor the performance of the project to assure adherence to performance goals, time schedules or other requirements as appropriate to the project or the terms of the agreement. The recipient is responsible for monitoring the activities and performance of, and the pass through requirements to, any and all subrecipients.

4.1.3. Subrecipient Monitoring (SEPT 2020)

A subrecipient is a non-Federal entity that receives a sub-award from a Prime Recipient/pass-through entity to carry out part of a Federal award/project. Subrecipients must be monitored by the Prime Recipient to ensure program/project performance and financial and administrative regulatory compliance. Prime Recipients must ensure their subrecipient

institutions possess adequate policies, processes, procedures and systems to manage their awards from a Prime Recipient.

Applicants being considered for an DOE award that contain sub-awards should be prepared to submit a copy of their subrecipient Monitoring policy and, if necessary, a copy of the proposed sub-award agreement(s) to DOE for review.

4.1.4 Lobbying

GOs should monitor recipient performance to ensure inappropriate activities are not conducted and no lobbying costs are incurred. Performance may be monitored through the review of performance, technical and financial reports. Site visits are recommended for high risk recipients, e.g. recipients who (1) are non-profit organizations, (2) have lobbying affiliates, (3) have ongoing projects with DOE to promote specific energy technologies and (4) rely on DOE to provide the major source of income.

A special audit or review of the recipients records may be requested to make cost determinations if the summary level information provided is insufficient to determine whether costs have been expended for inappropriate actions. Special audits are performed at the request of the GO and are in addition to the recipient's requirement to arrange for an annual single audit or annual indirect cost audit.

4.2 Revisions and Extensions

4.2.1 Project Scope and Budget Revisions

GOs must provide prior written approval before the recipient may make any of the following project changes:

- (A) Change in the approved scope or the objective of the project or program, even if there is no associated budget revision requiring prior written approval;
- (B) Change in a key person specified in the application or the Federal award;
- (C) The disengagement from the project for more than three months, or a 25 percent reduction in time devoted to the project, by the approved project director or principal investigator;
- (D) The inclusion, unless previously waived by the DOE, of costs that require prior approval in accordance with Subpart E—Cost Principles of this part or 45 CFR part 75 Appendix IX, “Principles for Determining Costs Applicable to Research and Development under Awards and Contracts with Hospitals,” or 48 CFR part 31, “Contract Cost Principles and Procedures,” as applicable;
- (E) The transfer of funds budgeted for participant support costs as defined in 2 CFR Part 200.75 *Participant support costs* to other categories of expense;

(F) Unless described in the application and funded in the approved DOE award, the subawarding, transferring, or contracting out of any work under a DOE award, including fixed amount subawards as described in 2 CFR Part 200.332 *Fixed amount subawards*. This provision does not apply to the acquisition of supplies, material, equipment or general support services;

(G) Changes in the approved cost-sharing or matching provided by the non-Federal entity; and/or

(H) The need arises for additional Federal funds to complete the project.

GOs should consider the value to the overall success of the project or increased significance and value of the amended project when reviewing request(s) for project revisions.

Project revisions to awards from a competitive announcement must remain within the programmatic boundaries of the announcement and should be considered meritorious under the merit review criteria of the announcement. Substantial changes to the project's budget and/or scope or objectives will require a determination of non-competitive financial assistance if the changes would not be acceptable under the original announcement.

For more information on revisions to budgets or project plans see 2 CFR part 200.308.

4.2.2 Period of Performance Revisions

The end date of the project period may be changed as a result of a recipient initiated One-Time Extension (see 4.2.3 below), or, if applicable, by execution of a Renewal Award by DOE (see 4.4 Renewal Award).

4.2.3 One Time Extensions

In accordance with 2 CFR part 200.308, the recipient may initiate a One-Time Extension of the Period of Performance for up to 12 months if additional time beyond the approved Period of Performance is required to assure completion of the original project objectives or scope.

One-Time Extensions:

- provides no additional funds,
- approves no additional work,
- must have all previously approved work from the original project objectives or scope completed within the approved awarded budget,
- may not be exercised merely for the purpose of using unexpended funds;
- cannot be granted for awards that contain a zero balance, and
- per regulation, cannot be exercised on SBIR and STTR awards.

- If a recipient receives a One-Time Extension of their award, then the GO must modify the award with the new end date of the Period of Performance (project period).

To request a One-Time Extension, recipients must notify the GO in writing with the supporting reasons for the extension and the revised Period of Performance at least ten (10) calendar days** before the end of their original period of performance.

Extensions MUST be approved in advanced and in writing by the GO under the following circumstances:

- If prohibited by the terms and conditions of the award;
- If the extension requires additional funds; or
- If the extension requires any change to the approved project objectives or scope.

A One-Time Extension does not require approval one level above the GO, even if the total project period of performance is extended past five years.

**** Note:** While the regulations require a 10-day notification, DOE may require in the award terms at least a 30-day notification to allow enough time to process the requests before the expiration date of the original Period of Performance. The GO must modify the award with the new end date of the Period of Performance.

4.2.4 Carryover (SEPT 2020)

Carryover is the process by which unobligated funds remain at the end of a budget period and may be carried forward to cover allowable costs in the next budget period.to

Unobligated funds remaining at the end of any budget period that, with the approval of the sponsored program and GO may be carried forward to the next budget period to cover allowable costs of that budget period. There must be a bona fide programmatic need justified for the use of carryover funds in the next budget period. In the event a bona fide need cannot be adequately justified the unobligated funds shall be used minus the next budget period funding obligated.

4.3 Continuation Awards

A Continuation Award is a non-competitive award for a succeeding or subsequent budget period after the completion of a budget period within an approved period of performance. The continuation award authorizes the expenditure of funds for the project to be performed during the new budget period.

Continuation funding is contingent on: (1) availability of funds appropriated by Congress for the purpose of this program; (2) the availability of future-year budget authority; (3) substantial progress towards meeting the objectives of the approved application; (4) submittal of required reports; (5) compliance with the terms and conditions of the award; and (6) DOE approval of a

continuation application. The required content of the continuation application should be included in the terms and conditions of the initial agreement.

The GO and TPO review a continuation application for the adequacy of the awardee's progress and planned conduct of the project in the subsequent budget period. A continuation application shall not be required to compete against any other application.

4.4 Renewal Awards (SEPT 2020)

A Renewal Award adds one or more budget periods and extends the period of performance of the initial award. Discretionary renewal awards may be made on the basis of an announcement or on a noncompetitive basis when reviewed for merit and justified in accordance with 2 CFR Part 910.126 *Competition*.

Renewal applications should be submitted in accordance with an announcement or requirements provided by the GO and no later than six months prior to the scheduled expiration of the project period unless a program rule or other document establishes a different application deadline. The same process for making an initial award should be followed when making a renewal award. GOs must check and document: entity eligibility, SAM checks for current registration, check and confirm the recipient and any identified sub-awardees are not on the excluded party lists, update the award terms and conditions and perform a merit review and budget review.

Before DOE may make a renewal award for a formula award, the recipient must submit a revised or amended State plan in accordance with program rules and other instructions from DOE.

Renewal award funding is contingent on: (1) availability of funds appropriated by Congress for the purpose of this program; (2) the availability of future-year budget authority; (3) substantial progress towards meeting the objectives of the approved application; (4) submittal of required reports and renewal application documents; and (5) compliance with the terms and conditions of the award; and (6) DOE approval of a renewal application.

4.5 Reporting

(A) Generally, the DOE TPO is responsible for monitoring Progress Reports, Research Performance Progress Reports (RPPR), and Special Status Reports and the GO is responsible for monitoring the receipt of other reports.

(1) The GO should ensure that these roles are clearly understood and that the DOE TPO understands his/her responsibilities for monitoring the receipt of reports and the required follow-up actions.

(2) GOs and DOE TPOs should keep each other informed if reports are not received.

(3) Each Contracting Activity must establish procedures that ensure that all reports, including the final scientific/technical reports and other STI, as required by the Financial Assistance

Reporting Checklist and terms and conditions of the award, is announced and or submitted to OSTI or other applicable office. In addition to the final scientific/technical report, it is important to ensure recipients submit to OSTI their final-peer reviewed manuscripts that have been published during the course of the award. Contracting Activities are encouraged to send reminders to appropriate recipient officials a few weeks before a reporting period ends. This will prevent reporting delinquencies due to mere oversight on the part of the recipient and so reduce the need for follow-up action.

(B) GOs should follow the Noncompliance procedures for overdue reports (See FA Guide Chapter 6 Noncompliance):

(1) *Immediate follow-up action*: When a report has not been received in accordance with the terms of the award, the GO should contact the recipient to advise of the delinquency and request corrective action plan from recipient.

(2) *Notice of Noncompliance*: If a report is overdue by 30 days, the GO must send a letter to the recipient notifying it of the delinquency and requesting the report. This letter may be sent electronically. The letter must state that, if the report cannot be submitted promptly, the recipient should explain the reason and state the date by which DOE will receive the report.

(3) *Second Letter*: If neither a report nor an acceptable explanation for not submitting it is received from the recipient within 30 days of the date of the first letter, the GO must send (by certified mail, return receipt requested) a written notice of noncompliance. Among other things, this notice must state what enforcement action will be taken if the report is not received within 30 days (e.g., suspension or termination of the award if still active, withholding of any additional funds for the project, etc.). Remedies for non-compliance are set forth in 2 CFR Part 200.338.

(4) *Funds Cutoff*: If neither the report nor an acceptable explanation is received within 30 days of the second letter, no additional funds shall be awarded for the project while the report remains overdue and the award, if still active, shall be suspended. The suspension notice must set a final date by which the report must be received. If the report or an acceptable explanation is not received by that date, the suspension shall be converted into a termination. See 2 CFR Parts 200.338 through 200.342.

(5) *Final Reports*: If a final report has not been obtained after taking all the actions set forth above, the GO may annotate the award file noting the performance noncompliance, withhold any monies not previously paid, and proceed to close out. The apparent willful failure of the recipient to perform according to the terms of the award shall be reported immediately to the Department's Debarment and Suspension Official (i.e., the Director, Office of Acquisition Management, or the Director, Office of Acquisition Management for NNSA) with a recommendation to consider debarment of the recipient. This should also be reported to the appropriate Government repository for contractor/recipient performance (i.e. FAPIIS).

(6) *Waivers and Extensions*: If at any time the recipient provides an acceptable explanation of why the overdue report cannot be submitted promptly, the reporting requirement may be

waived or a new due date set. Further extensions of the due date should also be given if justified. However, if, without an acceptable explanation, the recipient fails to submit a report once overdue by a new due date, the funds cutoff action in paragraph (b)(4) should be taken without the delay of further warning letters. Any letter setting a new due date shall advise the recipient of this and the possibility for additional or more severe enforcement actions.

(7) *Additional Actions*: The GO may impose additional specific award conditions as described in 2 CFR part 200.207 which may include one or more of the following:

- (a) Requiring payments as reimbursements rather than advance payments;
- (b) Withholding authority to proceed to the next phase until receipt of evidence of acceptable performance within a given period of performance;
- (c) Requiring additional, more detailed financial reports;
- (d) Requiring additional project monitoring;
- (e) Requiring the non-Federal entity to obtain technical or management assistance; or
- (f) Establishing additional prior approvals.

If DOE determines that the noncompliance cannot be remedied by these additional specific award conditions, DOE or the pass-thru entity may take one or more of the actions outlined in 2 CFR Part 200.338 *Remedies for noncompliance*.

(C) When a report is overdue, the only acceptable reasons for waiving the reporting requirement or setting a new due date shall be that: 1) the report cannot be furnished in a timely manner for reasons legitimately beyond the control of the recipient; or 2) the purposes for which the report is to be used will be accomplished through other means. The recipient should be informed or reminded of this policy in the first letter sent when a report becomes overdue or in the notice of payment withholding.

4.6 Indirect Rates

(A) Except as otherwise provided, all project grants and cooperative agreements awarded by the Department shall include funds for the amount of indirect costs applicable to the awards, based on the Federally Negotiated Indirect Cost Rate in effect for the recipient at the time of the award. As required by 2 CFR Part 200.414, the negotiated rates must be accepted by all Federal awarding agencies.

Indirect cost reimbursement on grants and cooperative agreements awarded under programs with statutory prohibitions or limitations against the reimbursement of indirect costs shall be made in accordance with the statutory prohibitions or limitations and an exception to the Federally Negotiated Indirect Cost Rates must be approved by the agency head and OMB must be notified.

(1) The total amount awarded (direct plus indirect costs) less any applicable recipient cost share or match shall constitute a ceiling on the amount payable to the recipient for the grant or cooperative agreement. The award of a grant or cooperative agreement shall not obligate the Government to make any supplemental or other award for additional indirect costs or for any other purpose.

(2) Funds should be included for indirect costs associated with any additional direct costs awarded for the expansion or extension of a project in supplemental awards. Additional direct costs awarded for other reasons may be accompanied by associated indirect costs at the awarding Agency's option.

(B) During the project period, reimbursement of indirect costs, while generally based on the current approved rate, is not dependent on the rate used to negotiate the total project cost. Reimbursement is however limited by the budgeted dollar amount for indirect costs. If during the project period, indirect costs are less than the budgeted amount, recipients may use the difference to pay additional direct costs. Recipients are expected to manage their indirect costs, DOE will not amend an award solely to provide additional funds for changes in indirect cost rates.

(C) At the completion of the agreement, the closeout process will include audits of indirect rates and incurred costs. If the DOE share of the incurred costs is less than the amount reimbursed under the agreement, the recipient shall refund the difference to DOE. If the DOE share of the incurred costs is greater than the amount reimbursed, but less than the total cumulative obligations, the recipient may request payment of the difference. If the DOE share of the incurred costs is greater than the total cumulative obligations, DOE will not make additional obligations, reimbursements or payments.

4.7 Property

4.7.1 Types of Property

Property means, unless otherwise stated, real property, equipment, intangible property and supplies. Property is divided into two basic types: real and personal.

(A) Real Property, as defined in 2 CFR Part 200.85, means land, including land improvements, structures and appurtenances thereto, but excludes movable machinery and equipment.

(B) Personal Property, as defined in 2 CFR Part 200.78, means property other than real property. It may be tangible, having physical existence, or intangible.

(1) Tangible personal property is further divided into equipment and supplies.

(a) Equipment, as defined in 2 CFR Part 200.33, means tangible personal property having a useful life of more than one year and a per-unit acquisition cost which

equals or exceeds the lesser of the capitalization level established by the non-Federal entity for financial statement purposes, or \$5,000.

(b) Supplies, as defined by 2 CFR Part 200.94, means all tangible personal property other than those described in § 200.33 Equipment. A computing device is a supply if the acquisition cost is less than the lesser of the capitalization level established by the non-Federal entity for financial statement purposes or \$5,000, regardless of the length of its useful life. See also §§ 200.20 Computing devices and 200.33 Equipment.

(2) Intangible property, as defined by 2 CFR Part 200.59, means property having no physical existence, such as trademarks, copyrights, patents and patent applications and property, such as loans, notes and other debt instruments, lease agreements, stock and other instruments of property ownership (whether the property is tangible or intangible). Intellectual property is discussed further in Subchapter 2.5.9.

4.7.2 Insurance Coverage for Property

As described in 2 CFR 200.310, 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 award.

4.7.3 Real Property

Subject to the conditions set forth in 2 CFR Part 200.311, title to real property acquired or improved under a Federal award will vest upon acquisition in the non-Federal entity.

The non-Federal entity cannot encumber this property and must follow the requirements of 2 CFR Part 200.311 before disposing of the property.

Except as otherwise provided by Federal statutes or by the DOE, real property will be used for the originally authorized purpose as long as needed for that purpose. When real property is no longer needed for the originally authorized purpose, the non-Federal entity must obtain disposition instructions from the DOE or pass-through entity. The instructions must provide for one of the following alternatives: (a) retain title after compensating the DOE as described in 2 CFR Part 200.311(c)(1); (b) Sell the property and compensate the DOE as specified in CFR Part 200.311(c)(2); or (c) transfer title to the DOE or to a third Party designated/approved by the DOE as specified in CFR Part 200.311(c)(3).

See 2 CFR Part 200.311 for additional requirements pertaining to real property acquired or improved under a Federal award.

Also see 2 CFR Part 910.360 for amended requirements for Real Property for For-Profit recipients.

4.7.4 Federally Owned and Exempt Property

Federally-owned property shall be managed in accordance with 2 CFR Part 200.312 and a list of federally-owned property accountable under an award must be provided as an attachment to the award.

Title to Federally owned property remains vested in the Federal government. The non-Federal entity must submit an annual inventory of property in its custody to the DOE. Upon completion or when the property is no longer needed, the non-Federal entity must report the property to the DOE for further DOE utilization.

If the DOE has no further need for the property, it must declare the property excess and report it for disposal to the appropriate federal disposal authority, unless the DOE has statutory to dispose of the property by other methods. The DOE must issue appropriate instructions to the non-Federal entity.

Exempt federally-owned property means property acquired under a Federal award where the DOE has chosen to vest title to the property to the non-Federal entity without further obligation to the Federal Government, based upon the explicit terms and conditions of the Federal award. The DOE may exercise this option when statutory authority exists. Absent statutory authority and specific terms and conditions of the Federal award, title to exempt federally-owned property acquired under the Federal award remains with the Federal Government.

4.7.5 Equipment

Subject to the conditions provided in 2 CFR Part 200.313, title to equipment (property) acquired under a Federal award will vest conditionally with the non-Federal entity.

The non-Federal entity cannot encumber this property and must follow the requirements of 2 CFR Part 200.313 before disposing of the property.

States must use equipment acquired under a Federal award in accordance with state laws and procedures.

Equipment must be used by the non-Federal entity in the program or project for which it was acquired as long as it is needed, whether or not the project or program continues to be supported by the Federal award. When no longer needed for the originally authorized purpose, the equipment may be used by programs supported by the DOE in the priority order specified in 2 CFR Part 200.313(c)(1)(i) and (ii).

Management requirements, including inventory and control systems, for equipment are provided in 2 CFR Part 200.313(d).

Disposition requirements are contained in 2 CFR part 200.313 (e). When equipment acquired under a Federal award is no longer needed, the non-Federal entity must obtain

disposition instructions from the DOE or pass-through entity. DOE has 120 days to provide disposition instructions after receipt of the final inventory.

Disposition will be made as follows: (a) items of equipment with a current fair market value of \$5,000 or less may be retained, sold, or otherwise disposed of with no further obligation to the DOE; (b) Non-Federal entity may retain title or sell the equipment after compensating the DOE as described in 2 CFR Part 200.313(e)(2); or (c) transfer title to the DOE or to an eligible third Party as specified in CFR Part 200.313(e)(3).

See 2 CFR Part 200.313 for additional requirements pertaining to equipment acquired under a Federal award. Also see 2 CFR Part 200.439 Equipment and other capital expenditures.

See 2 CFR Part 910.360 for amended requirements for Equipment for For-Profit recipients.

4.7.6 Supplies

See 2 CFR Part 200.314 for requirements pertaining to supplies acquired under a Federal award.

See also § 200.453 Materials and supplies costs, including costs of computing devices.

4.7.7 Intangible Property

Title to intangible property acquired under a Federal award vests upon acquisition in the non-Federal entity.

See 2 CFR Part 200.315 for additional requirements pertaining to intangible property acquired under a Federal award.

Also see 2 CFR Part 910.362 for amended requirements for Intellectual Property for For-Profit recipients.

4.7.8 Property Trust Relationship

Real property, equipment, and intangible property, that are acquired or improved with a Federal award must be held in trust by the non-Federal entity as trustee for the beneficiaries of the project or program under which the property was acquired or improved.

See 2 CFR Part 200.316 for additional requirements pertaining to real property, equipment, and intangible property acquired or improved under a Federal award.

CHAPTER 5 - AUDITS

5.1 Audits

The government-wide single audit requirements which apply to awards to States, Local Governments and Non-Profit Organizations are contained in [2 CFR 200 Subpart F](#) and the For-Profit audit requirements for DOE are contained in [2 CFR 910 Subpart F](#).

Key changes to the audit requirements are:

- 2 CFR Parts 200.500 through 200.521 and 2 CFR parts 910.500 through 910.521 provide guidance for audits covering the recipient's fiscal periods beginning on or after December 26, 2014.
- The threshold for requiring a single audit for States, Local Governments and Non-Profit Organizations or a DOE-specific For-Profit audit has been raised from \$500,000 to \$750,000 in total expenditures of Federal funds for a single fiscal year.
- For 2 CFR 200 Subpart F, Audit reports must be completed and the reporting package submitted to the Federal Audit Clearinghouse (FAC) 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.
- For 2 CFR 910 Subpart F, Audit reports must be completed and the reporting package submitted to the GO and the DOE CFO 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.
- The Single Audit Accountable Official responsible for ensuring that the Department fulfills all single and for profit audit requirements and responsibilities as a Federal Awarding Agency is the Director of the Office of Policy (MA-61), of the Office of Acquisition Management.
- The Key Management Single Audit Liaison supports the Single Audit Accountable Official and serves as the management point of contact for the single audit process at the Department, including inter-agency coordination, timely follow up of audit findings and corrective action, and development and tracking of performance metrics. The Director of the Contractor Human Resources Policy Division (MA-612), of the Office of Policy, of the Office of Acquisition Management, is the DOE Key Management Single Audit Liaison.
- Clarification to existing policy:
 - Determination of the audit threshold under 2 CFR 200, Subpart F and 2 CFR 910, Subpart F is exclusive of any cost share.

5.2 Audit Requirements

Audit requirements guidance is contained in separate sub-sections. Subsection 5.2.1 contains the audit requirements guidance for States, Local Governments and Non-Profit Organizations while subsection 5.2.2 contains the audit requirements guidance for For-Profit Organizations.

5.2.1 Audit Requirements for States, Local Governments and Non-Profit Organizations

(A) General. The Single Audit Requirements are set forth in 2 CFR 200 Subpart F and supersedes OMB Circular A-133 for the audit of States, Local Governments, and Non-Profit Organizations for fiscal years beginning on or after December 26, 2014.

All States, Local Governments and Non-Profit Organizations that expend over \$750,000 in Federal funds, exclusive of cost share, in any year are required to have a single audit conducted in accordance with 2 CFR 200 Subpart F. This requirement flows down to subrecipients that meet the \$750,000 dollar threshold. Notwithstanding the exclusion of cost share in determining whether the \$750,000 threshold has been exceeded, the scope of the audit must assess whether the recipient is in compliance with the cost share arrangement set forth in the terms of the award.

An independent auditor must:

- (1) perform an audit of the financial statement(s) for the Federal Program in accordance with Generally Accepted Government Auditing Standards (GAGAS);
- (2) obtain an understanding of internal controls and perform tests of internal controls over the Federal programs;
- (3) perform procedures to determine whether the auditee has complied with Federal statutes, regulations, and the terms and conditions of Federal awards that could have a direct and material effect on the Federal program;
- (4) follow up on prior audit findings, perform procedures to assess the reasonableness of the summary schedule of prior audit findings prepared by the auditee; and
- (5) report any audit findings.

Any entity that expends less than \$750,000 in Federal funds in a fiscal year is not required to have a single audit performed. However, if a GO determines special circumstances make a review or audit necessary, such a requirement should be included in the terms and conditions of the award as a special condition.

(B) Audit Objective. The single audit provides an independent, cost-effective tool for obtaining information on the recipient's financial management practices and administration of Federal funds. The audit does not provide detailed information on individual awards but will show whether or not the recipient has an adequate accounting system and internal controls, financial statements prepared in accordance with generally accepted accounting

principles (GAAP), accurate and reliable reports, and expenditure of Federal funds in accordance with Federal laws and regulations.

(C) Reporting Requirements. The Single Audit Report is submitted to the Federal Audit Clearinghouse (FAC) via the Internet (<https://harvester.census.gov/facweb/>) and Standard Form SAC (SF-SAC) “Data Collection Form for Reporting on Audits of States, Local Governments and Non-profits Organizations.”

The following checklist summarizes the major elements that must be addressed in a Single Audit reporting package. The table below is simply a top level summary. GOs, recipients, and auditors should review the specific references to 2 CFR 200 in the preparation, submission, and review of the Single Audit package since it contains specific direction and guidance and also takes precedence over this guide in the event of a conflict between the two documents.

It should be noted that organization of the audit report itself and the audit reporting package is largely at the discretion of the auditor and recipient, the checklist represents the content that must be addressed regardless of organization or structure of the report and reporting package:

Single Audit Checklist		
Requirement	Component	Reference
Required	Financial Statements	2 CFR 200.510(a)
Required	Schedule of Expenditures of Federal Awards	2 CFR 200.510(b)
Required, if there were Prior Audit Findings	Summary Schedule of Prior Audit Findings	2 CFR 200.511(b)
Required	Auditor’s Report	2 CFR 200.515
	<u>Opinion/Disclaimer on Financial Statements</u> - whether the financial statements are presented fairly in all material respects in accordance with generally accepted accounting principles;	2 CFR 200.515(a)
	<u>Opinion on Schedule of Expenditures of Federal Awards</u> - whether the schedule of expenditures of Federal awards is fairly stated in all material respects in relation to the financial statements as a whole	2 CFR 200.515(a)
	<u>Internal Control</u> – report on internal control over financial reporting and compliance with provisions of laws, regulations, contracts, and award agreements, noncompliance with which could have a material effect on the financial statements	2 CFR 200.515(b)
	<u>Compliance</u> - report on compliance for each major program and a report on internal control over compliance	2 CFR 200.515(c)
	Schedule of Findings & Questioned Costs	2 CFR 200.515(d)
Required if there are audit findings	Recipient’s Corrective Action Plan	2 CFR 200.511(c)

(D) Responsibilities

(1) *Recipient Responsibilities.* Recipients are responsible for managing their Federal awards. This is accomplished by establishing and maintaining internal controls that provide assurances that objectives can be met; establishing and maintaining an accounting system in accordance with GAAP and that can adequately accumulate and segregate costs; and prepares financial statements and other related documents in a timely and accurate manner. Recipient responsibilities as an auditee are prescribed in 2 CFR 200.508 through 2 CFR 200.512 and include responsibility for:

- (a) Preparing records, information, and documents including: (i) identifying Federal awards received and expended; (ii) preparing financial statements; and (iii) Schedule of Expenditures of Federal Awards;
- (b) Ensuring that the audit is completed in accordance with 2 CFR 200 Subpart F and submitted to the FAC on the SF-SAC within the earlier of 30 calendar days after receipt of the Auditor's report(s) or nine months after the end of its fiscal year;
- (c) Retaining a qualified independent auditor;
- (d) Implementing corrective actions for all audit findings. As part of this responsibility, the recipient shall prepare a summary schedule of prior audit findings and a corrective action plan for current year audit findings. The summary schedule of prior audit findings shall report the status of all audit findings included in the prior audit's schedule of findings and questioned costs relative to Federal awards. The summary schedule shall also include repeat findings that were also reported in the prior year audit.
- (e) Recipients are also responsible for monitoring subrecipients to ensure that those that are required to submit an audit based on the expenditure of Federal funds do so according to 2 CFR 200 Subpart F.

(2) *Auditor Responsibilities.* The auditor is responsible for performing the audit in accordance with GAGAS. The auditor must:

- (a) assess whether the auditee has complied with laws, regulations and agreement provisions that have a direct effect on the Federal programs where funds have been expended;
- (b) test the internal controls and financial management systems; and
- (c) follow-up on prior audit findings and assess the reasonableness of the corrective plans and actions identified by the auditee. Auditor responsibilities are prescribed in 2 CFR 200.514 through 2 CFR 200.520.

(3) *Agency Responsibilities.* Federal agencies are responsible for:

- (a) ensuring that audits are completed and audit reports received in a timely manner and in accordance with the requirements of 2 CFR 200 Subpart F;
- (b) providing technical advice and counsel to auditees and auditors as requested;
- (c) issuing a management decision on audit findings within six months after receipt of the audit report;
- (d) ensuring that the recipient takes appropriate and timely corrective action; and
- (e) providing annual updates to the compliance supplement.

An agency may have additional responsibilities depending on the amount of funding provided to a recipient. An agency is given the designation of cognizant agency or oversight agency if it has provided the most direct funding to the recipient. The cognizant designation is used when the funding level is over \$50 million in a year (2 CFR 200.513 *Responsibilities*).

If a program specific audit is required, the agency is responsible for all levels of agency responsibilities. This includes providing program specific audit requirements.

At DOE, the Director of the Office of Policy (MA-61), of the Office of Acquisition Management, is the Single Audit Accountable Official responsible for ensuring that the Department fulfills all requirements and responsibilities as a Federal Awarding Agency. Supporting the Single Audit Accountable Official is the Key Management Single Audit Liaison who serves as the management point of contact for the single audit process at the Department, including oversight of audit resolution and tracking of performance metrics. The Director of the Contractor Human Resources Policy Division (MA-612), of the Office of Policy, of the Office of Acquisition Management, is the DOE Key Management Single Audit Liaison.

(4) *Office of Financial Policy and Internal Controls (OFPIC)/Audit Resolution Team (ART)*. The OFPIC Audit Resolution Team has operational responsibility for the following activities related to the Single Audit resolution process: downloading audits from FAC, identifying trackable findings, disseminating audit reports to program audit coordinators, initiate tracking in the DOE Audit Resolution Tracking System (DARTS), establishing audit resolution procedures with respect to DARTS, and helping support the DOE Key Management Single Audit Liaison when requested.

(5) *Program Office Responsibilities*. Program offices are responsible for designating an audit coordinator, establishing audit resolution procedures, and coordinating implementation with Head of Contracting Activities. The designation by a program office of an audit coordinator is critical to ensuring that lead and supporting offices are properly identified and coordinated, that audit reports are disseminated for actions to the appropriate GOs, and that the status of corrective actions and management decisions are entered into DARTS.

(6) *Head of Contracting Activity (HCA) Responsibilities.* Each Head of Contracting Activity is responsible for ensuring compliance with the requirements of 2 CFR 200 Subpart F at the local level. The HCA is responsible for:

- (a) *Expertise.* Ensuring that their respective contracting offices have within it or from another organization, the requisite subject matter expertise needed to analyze, track, and appropriately disposition any audit findings in DARTS
- (b) *Audit Retrieval.* Coordinating with its respective program office(s) to designate an individual with responsibility for retrieving audits from FAC when needed and reporting audit resolution status to the OFPIC Audit Resolution Team via DARTS.
- (c) *Tracking and Timely Resolution.* Ensuring that contracting staff is timely and responsive in resolving audit findings, reviewing and tracking corrective actions, responding to inquiries or from audit coordinators and providing utilize the DOE Audit Resolution Tracking System (DARTS) for official tracking and disposition of audit findings. Procedures and guidance on DARTS is issued by OFPIC.

(7) *GO Responsibilities.* The GO is responsible for including the appropriate audit requirements in the award instrument; monitoring compliance with audit requirements; reviewing problem audits; approving and monitoring corrective action plans to resolve audit findings and recommendations; and reviewing audits in the FAC as part of the risk and responsibility determinations and post-award/close-out functions. The GO should ensure that audits are completed and submitted as part of the administration of the award's reporting requirements.

GOs should review audits in the FAC as part of the pre-award, continuation and renewal risk and responsibility determinations and post-award/close-out functions.

- (a) *Pre-Award.* GOs are responsible for determining the business and financial management capabilities of potential recipients. The SF-SAC in the Clearinghouse database can assist the GO in making the determination that a potential recipient has an acceptable accounting system and internal controls.

GOs should check the database for previous audit reports, questioned costs, corrective action plans and their resolution, and document the file with the findings from the review. Copies of the supporting audits may be obtained from the FAC if not previously received by the GO.

Potential recipients with prior audit findings and corrective action plans should be considered for special conditions, payment by reimbursement or other controls to ensure that the funding is properly used.

- (b) *During the Project Period.* The FAC should be checked when reviewing the continuation award package just as in the pre-award phase. Recipients that were held to special conditions or controls that have shown improvement in their audits should have those conditions or controls lessened or removed. New conditions or controls

should be placed on recipients that have had negative audit findings since the start of the project or that have not submitted the audit(s).

(c) *Post-Award and Close-out.* Audits should be reviewed during the close-out process to ascertain if any negative audit findings will affect the agreement. An agreement should not be retired if the audit findings would impact the budget or other terms and conditions.

(E) Communicating With Recipients to Reduce Overdue or Non-Compliant Audit Reports and Repeat Findings. With audit reports, COs and DOE Project Officers are encouraged to communicate with recipients to ensure timely submission of audit reports that are compliant with submission instructions and standards and to reduce repeat findings. For recipients without extensive experience managing Federal Awards, they should be briefed on their responsibilities and requirements at the outset of their award with ongoing outreach over the life of the award.

For recipients with extensive experience managing Federal awards, the communication may be simply a reminder. However, for those recipients who have had reportable finding in previous reports, the communication should be more extensive and GOs and Project Officers should include the status of corrective actions, delinquent or noncompliant audit reports in their communications, and special conditions that the Government may implement until the noncompliance is resolved (see guidance in Chapter 4.5(B) and 6.2). When delinquent audits and audit findings continue to fail to be remedied, termination/enforcement actions should be considered (See guidance in Chapter 6.3-Suspension and Debarment).

If a required final audit report has not been obtained after taking all available actions, the GO may annotate the award file noting the noncompliance, withhold any monies not previously paid, report the noncompliance in FAPIIS and proceed to close out.

(F) Required Notification and Coordination with the Key Management SA Liaison Official.

MDLs, under specific circumstances, require additional coordination with ART and the Key Management SA Liaison before the GO issues an MDL. The program office and GO will need to notify and coordinate with both the ART and the Key Management SA Liaison for the following types of Single Audit and For-Profit actions:

- (1) When a recipient asserts, and the GO concurs, that audit findings are either invalid or do not warrant action on its part. In such instances, the program/office in conjunction with the GO, must notify the ART and Key Management SA Liaison of the intent to designate the findings of an independent auditor as not valid or otherwise inapplicable. The notification should be supported by (a) a copy of the audit report, (b) an explanation of the salient details supporting the conclusion that the audit findings are either invalid or do not warrant grantee action, and (c) a draft of the final MDL.
- (2) When the GO does not pursue questioned costs, the program/office in conjunction with the GO, must notify the ART and Key Management SA Liaison of its intent not to pursue

these costs. This should be supported by (a) a copy of the audit report, (b) an explanation of the salient details supporting the GOs decision and actions taken to date including the statutory authority that permits granting relief, (c) evidence of review and concurrence by field counsel, the local CFO, and the Procurement Director, and (d) a copy of the draft *final MDL*.

- (3) When the Management Decision involves repeat findings, the program/office in conjunction with the GO, must provide the ART and Key Management SA Liaison for review, a copy of the draft final MDL.

Program/Offices in conjunction with the GO, must provide the Key Management SA Liaison 5 business days to review the contemplated action before executing the letter. After 5 business days, Programs/Offices may proceed if no further direction is provided.

Packages must be submitted through the DOE Single Audit Mailbox at:

SingleAuditMailbox@hq.doe.gov.

5.2.2 Audit Requirements for For-Profit Organizations

(A) General. The For-Profit Audit Requirements are set forth in 2 CFR 910 Subpart F and supersedes the DOE For-Profit Audit Guidance Parts I through IV for the audit of expenditures in non-federal entities for fiscal years beginning on or after December 26, 2014.

For-Profit entities that expend over \$750,000 in DOE funds, excluding cost share, in a fiscal year are required to have a compliance audit conducted in accordance with 2 CFR 910 Subpart F. Notwithstanding the exclusion of cost share in determining whether the \$750,000 threshold has been exceeded, the scope of the audit must assess whether the recipient is in compliance with the cost share arrangement set forth in the terms of the award.

An independent auditor must:

- (1) perform the audit in accordance with the Generally Accepted Government Auditing Standards (GAGAS);
- (2) include an opinion on the financial statements in its reporting package if the grantee has received an opinion on its financial statements. If no such opinion has been rendered, there is no requirement to include the opinion in the reporting package;
- (3) render an opinion on the fair presentation of the schedule of expenditures of the DOE award in relation to the financial statements (if financial statements are available). If the auditor performs a financial statement audit of the grantee under the auditing standards of either the AICPA or the PCAOB, the auditor will report on the Schedule of Expenditures of DOE Awards in relation to the financial statements as a whole under either AICPA or PCAOB standards, as applicable;
- (4) gain an understanding of internal control structures over the DOE award; and

(5) audit and provide an opinion on compliance with requirements.

When a For-Profit recipient has multiple DOE awards and one or more of the awards have expenditures of \$750,000 or more of DOE funds in a fiscal year, a compliance audit is required for each of the awards with \$750,000 or more in expenditures. The remaining awards do not require, individually or in the aggregate, a compliance audit. Recipients that have total expenditures of \$750,000 or more but that do not have any single award with expenditures of \$750,000 or more are required to have a compliance audit of the awards in the aggregate (i.e., as a cluster of awards).

(B) Audit Objective. The audit(s) must determine and report on whether recipients have internal control structures in place that provide reasonable assurance that they have complied with DOE regulations and the terms and conditions of the awards.

(C) Reporting Requirements. Audits in compliance with 2 CFR 910 Subpart F are to be completed and the reporting package 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. Two copies of the audit must be submitted to DOE. One copy of the audit is to be submitted to the DOE GO at: <https://www.fedconnect.net/fedconnect/default.aspx> or another location that is specified in the award; and a second copy must be submitted to the DOE CFO at: DOE-Audit-Submission@hq.doe.gov

The following checklist summarizes the major elements that must be addressed in a For-Profit Audit reporting package. The table below is simply a top level summary, GOs, recipients and auditors should review the specific references to 2 CFR 910 in the preparation, submission, and review of the For-Profit Audit package since it contains specific direction and guidance and also takes precedence over this guide in the event of a conflict between the two documents.

It should be noted that organization of audit report itself and the audit reporting package is largely at the discretion of the auditor and recipient, the checklist represents the content that must be addressed regardless of organization or structure of the report and reporting package:

For-Profit Audit Checklist		
Requirement	Component	Reference
Required, if available	Financial Statements	2 CFR 910.510(a)
Required	Schedule of Expenditures of Federal Awards	2 CFR 910.510(b)
Required	Summary Schedule of Prior Audit Findings	2 CFR 910.511(b)
Required	Auditor's Report	2 CFR 910.515
	Opinion on the financial if the grantee has received an opinion on its financial statements. If no such opinion has been rendered, there is no requirement to include the opinion in the reporting package	2 CFR 910.515(a)

	• <u>Opinion on Schedule of Expenditures of Federal Awards</u> - whether the schedule of expenditures of Federal awards is fairly stated in all material respects in relation to the financial statements (if available) as a whole	2 CFR 910.515(a)
	• <u>Internal Control</u> – report on internal control over financial reporting and compliance with provisions of laws, regulations, contracts, and award agreements, noncompliance with which could have a material effect on the financial statements	2 CFR 910.515(b)
	• <u>Compliance</u> - report on compliance for each major program and a report on internal control over compliance	2 CFR 910.515(c)
	• Schedule of Findings & Questioned Costs	2 CFR 910.515(d)
Required if there are audit findings	Recipient's Corrective Action Plan	2 CFR 910.511(c)

(D) Responsibilities

(1) *Recipient Responsibilities.* Recipients are responsible for managing their DOE awards. This is accomplished by establishing and maintaining internal controls that provide assurances that all requirements can be met; establishing and maintaining an accounting system in accordance with GAAP and that can adequately accumulate and segregate costs; and prepares financial statements and other related documents in a timely and accurate manner. Recipient responsibilities as an auditee are prescribed in 2 CFR 910.508 through 2 CFR 910.512 and include responsibility for:

- Preparing records, information, and documents including: (i) identifying DOE awards received and expended; (ii) providing financial statements if available; (iii) preparing a Schedule of Expenditures of DOE Awards.
- Ensuring that the audit is completed in accordance with 2 CFR 910 Subpart F and submitted to the GO and the DOE CFO the earlier of 30 calendar days after receipt of the auditor's report(s), or within nine months of the end of the recipient's fiscal year.
- Implementing corrective action for all audit findings. As part of this responsibility, the recipient must prepare a summary schedule of prior audit findings and a corrective action plan for current year audit findings. The summary schedule of prior audit findings must report the status of all audit findings included in the prior audit's schedule of findings and questioned costs relative to Federal awards. The summary schedule shall also include repeat findings that were also reported in the prior year audit.
- Recipients are also responsible for monitoring subrecipients to ensure that those that are required to submit an audit based on the expenditure of Federal funds

under their project do so according to the appropriate requirements depending on entity type (2 CFR 200 Subpart F or 2 CFR 910 Subpart F).

(2) *Auditor Responsibilities.* The auditor is responsible for performing the audit in accordance with Generally Accepted Auditing Standards (GAAS), including GAGAS, AICPA Statements on Auditing Standards (SAS) 117 or auditing standards of the PCAOB. For-profit recipients should submit audited financial statements (if available) to DOE as a part of the compliance audit. The auditor is responsible for:

(a) assessing whether the auditee has complied with laws, regulations and agreement provisions that have a direct effect on the DOE awards where funds have been expended;

(b) testing the internal controls; and

(c) following up on prior audit findings and assessing the reasonableness of the corrective plans and actions. Auditor responsibilities are prescribed in 2 CFR 910.514 through 2 CFR 910.520 and also include:

- Preparing a report which includes an opinion/disclaimer on whether the financial statements, if available, are presented fairly in all material respects in accordance with GAAP if the grantee has received an opinion on its financial statements. If no such opinion has been rendered, there is no requirement to include the opinion in the reporting package; report on internal control over financial reporting, if the grantee has received an opinion on internal control over financial reporting. If no such opinion has been rendered, there is no requirement to include the opinion in the reporting package and opinion (or modified opinion) on compliance with Federal statutes, regulation and terms and conditions of the DOE award; a schedule of findings and questioned costs for reportable audit findings.
- Ensuring that reportable audit findings including those significant deficiencies, material weakness, noncompliance, qualified opinions, fraud, or misrepresentations as prescribed in 2 CFR 910.516 are addressed in the report.

(3) *Agency Responsibilities.* DOE is responsible for:

(a) ensuring that annual audits are completed and reports received in a timely manner and in accordance with the requirements of 2 CFR 910 Subpart F;

(b) providing technical advice and counsel to auditees and auditors as requested;

(c) issuing a management decision on audit findings within six months after receipt of the audit report; and

(d) for ensuring that the recipient takes appropriate and timely corrective action. Corrective action should be initiated within 6 months of the receipt of the audit report and should proceed as rapidly as possible.

In the case of an audit of a single award, the DOE office which made the award has the above responsibilities, including issuing the management decision. In the case of an audit of a multiple awards, the DOE office which awarded the preponderance of the DOE funds must take the lead on performing the above responsibilities and must coordinate its activities with the other DOE offices whose awards were part of the same compliance audit.

At DOE, the Director of the Office of Policy (MA-61), of the Office of Acquisition Management, is the Single Audit Accountable Official responsible for ensuring that the Department fulfills all For Profit audit requirements and responsibilities as a Federal Awarding Agency. Supporting the Single Audit Accountable Official is the Key Management Single Audit Liaison who serves as the management point of contact for the single audit process at the Department, including oversight of audit resolution, and development and tracking of performance metrics. The Director of the Contractor Human Resources Policy Division (MA-612), of the Office of Policy, of the Office of Acquisition Management, is the DOE Key Management Single Audit Liaison.

(4) *Office of Financial Policy and Internal Controls (OFPIC)/Audit Resolution Team (ART)*. The OFPIC Audit Resolution Team has operational responsibility for the following activities related to the For-Profit audit resolution process: receipt and collection of For-Profit audits from the DOE-Audit-Submission@hq.doe.gov mailbox, identifying trackable findings, disseminating audit reports to program audit coordinators, initiate tracking in the DOE Audit Resolution Tracking System (DARTS), establishing audit resolution procedures with respect to DARTS, and helping support the DOE Key Management Single Audit Liaison when requested.

(5) *Program Office Responsibilities*. Program offices are responsible for designating an audit coordinator, establishing audit resolution procedures, and coordinating implementation with Head of Contracting Activities. The designation by a program office of an audit coordinator is critical to ensuring that lead and supporting offices are properly identified and coordinated, that audit reports are disseminated for actions to the GO, and that the status of corrective actions and management decisions are entered into DARTS.

(6) *Head of Contracting Activity Responsibilities*. Each HCA is responsible for ensuring agency compliance with the requirements of 2 CFR 910 Subpart F at the local level. As with the Single Audit, the HCA is responsible for ensuring that their respective contracting offices have within it or from another organization, the requisite subject matter expertise needed to analyze, track, and appropriately disposition any audit findings.

- (a) Expertise. Ensuring that their respective contracting offices have within it or from another organization, the requisite subject matter expertise needed to analyze, track, and appropriately disposition any audit findings in DARTS
- (b) Audit Retrieval. Coordinating with its respective program office(s) to designate an individual with responsibility for retrieving For-Profit Audits from DARTS or the cognizant program/contracting office and reporting audit resolution status to the OFPIC Audit Resolution Team via DARTS.
- (c) Tracking and Timely Resolution. Ensuring that contracting staff is timely and responsive in resolving audit findings, reviewing and tracking corrective actions, responding to inquiries or from audit coordinators and providing utilize the DOE Audit Resolution Tracking System (DARTS) for official tracking and disposition of audit findings. Procedures and guidance on DARTS is issued by OFPIC.

(7) *GO Responsibilities*. The GO is responsible for including the appropriate audit requirements in the award instrument; monitoring compliance with audit requirements; reviewing problem audits; approving and monitoring corrective action plans to resolve audit findings and recommendations; and reviewing audits as part of the risk and responsibility determinations and post-award/close-out functions. The GO should ensure that audits are completed and submitted as part of the administration of the award's reporting requirements.

In the case of an audit of a single award, the current GO for the award has the above responsibilities, including approving and monitoring corrective action plans. In the case of an audit of a multiple awards, the current GO for the award with the preponderance of the DOE funds must take the lead on performing the above responsibilities and must coordinate its activities with the other GOs whose awards were part of the same compliance audit.

The GO shall ensure that audits are reviewed during the close-out process to ascertain if any negative audit findings affect the agreement. An agreement should not be retired if the audit findings would impact the budget or other terms and conditions. Also, it should not be retired if an uncosted balance remains and the audit has not yet been completed.

GOs should review audits as part of the pre-award, continuation and renewal risk and responsibility determinations and post-award/close-out functions.

- (a) Pre-Award. GOs are responsible for determining the business and financial management capabilities of potential recipients. They can consider reviewing previous audit reports, questioned costs, corrective action plans and their resolution when making the determination that a potential recipient has an acceptable accounting system and internal controls.

However, since there is no central location of DOE audit information for For-Profit entities, it will be up to the GO to determine if the applicant has previous audits. If this is the case, the GO would need to contact the offices which made the previous

awards and ask for a copy of the schedule of previous audit findings and their disposition.

Potential recipients with prior audit findings and corrective action plans should be considered for special conditions, payment by reimbursement or other controls to ensure that the funding is properly expended.

(b) During the Project Period. The GO would have to follow the same process when reviewing the continuation award package just as in the pre-award phase. Recipients that were held to special conditions or controls that have shown improvement in their audits should have those conditions or controls lessened or removed. New conditions or controls should be placed on recipients that have had negative audit findings since the start of the project or that have not submitted the audit(s).

(c) Post-Award and Close-out. Audits should be reviewed during the close-out process to ascertain if any negative audit findings will affect the agreement. An agreement should not be retired if the audit findings would impact the budget or other terms and conditions. Also, it should not be retired if an uncosted balance remains and the audit required by 2 CFR 910 Subpart F has not yet been completed. Moreover, this audit should be performed and submitted within six months of the end of the recipient's fiscal year.

(E) Communicating With Recipients to Reduce Overdue or Non-Compliant Audit Reports and Repeat Findings. As with Single Audits, GOs and DOE Project Officers with For-Profit entities that require an audit, are encouraged to communicate with recipients to ensure timely submission of audit reports that are compliant with submission instructions and audit standards and to reduce repeat findings. For recipients without extensive experience managing Federal Awards, they should be briefed on their responsibilities and requirements at the outset of their award with ongoing outreach over the life of the award.

For recipients with extensive experience managing Federal awards, the communication may be simply a reminder. However, for those recipients who have had reportable finding in the previous report, the communication should be more extensive and GOs and Project Officers should discuss the status of corrective actions, delinquent or noncompliant audit reports in their communications, and special conditions that the Government may implement until the noncompliance is resolved (see guidance in Chapter 4.5(B) and 6.2). When delinquent audits and audit findings continue to fail to be remedied, termination/enforcement actions should be considered (See guidance in Chapter 6.3-Suspension and Termination).

If a required final audit report has not been obtained after taking all available actions, the GO may annotate the award file noting the noncompliance, withhold any monies not previously paid, report the noncompliance in FAPIIS and proceed to close out.

(F) Required Notification and Coordination with the Key Management SA Liaison Official

The required coordination identified in 5.2.1(F) for Single Audits is applicable to the For-Profit Audits under 2 CFR 910, Subpart F. Exception on a case-by-case basis to specific

elements of 2 CFR 910 may be considered by the Key Management Single Audit Liaison except where otherwise required by law or expressly required by regulation. Specific requests to waive final audit must be supported by the following:

- (1) Document that at least 75% of the cost of the DOE award has been audited,
- (2) Previous audits contained no findings,
- (3) No other DOE awards are still subject to audit, and
- (4) Evidence of concurrence on the request package from the local CFO, Program Audit Coordinator, and Procurement Director.

The Key Management Single Audit Liaison must be provided 5 business days to review the request and provide an approval, disapproval, or request for information/clarification.

CHAPTER 6 -NON-COMPLIANCE ISSUES

There are three steps covered in this Chapter. First - identify the non-compliance; Second - issue a notice of non-compliance with suggested corrective actions; and Third – take remedial actions for non-compliance if corrections do not bring the non-federal entity into compliance.

6.1 Non-compliance

(A) GOs shall follow the following noncompliance procedural requirements when it has been determined that a recipient has not complied with the applicable requirements of 2 CFR Part 200, any applicable program statute or rule, or with any other term or condition of the award. Except for noncompliance with nondiscrimination requirements under 10 CFR Part 1040, GOs are responsible for providing the recipient with a detailed written notice of the noncompliance.

(B) When a review of the recipient's performance reveals an apparent failure to conform to the terms of the award, the issue(s) should immediately be discussed with the recipient. The recipient should be asked to provide an explanation and a correction action plan or remedy. If the recipient is unable to provide a satisfactory explanation and a satisfactory correction plan or remedy, the GO will then provide to the recipient a written Notice of Non-compliance and the expected corrective actions to be taken.

The Notice should contain (as a minimum):

- (1) The factual and legal bases for the determination of noncompliance;
- (2) Corrective actions that must be taken and the date (e.g. not less than 30 days after the date of the notice), by which they must be taken; and
- (3) Which remedial actions authorized under 2 CFR 200 DOE may take if the recipient does not achieve compliance by the time specified in the notice, or does not provide

satisfactory assurances that actions have been initiated that will achieve compliance in a timely manner.

(C) The notice should be sent by means that provide proof of delivery (e.g., email with read receipt, certified mail, return receipt requested) and which can establish the "count down" period for corrective action. GOs should coordinate the noncompliance determination and the resulting corrective action plan activities with the TPO and appropriate legal counsel.

(D) The GO may initiate any of the remedies in 6.1 concurrently with the written notice or with less than a 30 day period for correction: (1) whenever there is evidence that the award was obtained by fraud; (2) the recipient ceases to exist or becomes legally incapable of performing its responsibilities under the award; (3) or if there is serious mismanagement or misuse of award funds necessitating immediate action.

6.2 Remedies for Non-compliance

(A) Additional specific award conditions. In accordance with 2 CFR 200.338, if a non-Federal entity fails to comply with Federal statutes, regulations or the terms and conditions of an award, DOE or the pass-through entity may impose one or more of the additional specific award conditions described in §200.207 *Specific conditions*, as appropriate for the circumstances. In addition to the additional specific award conditions in §200.207, DOE or the pass-through entity may take one or more of the actions listed in paragraph (B).

The additional specific award conditions in §200.207 which may be imposed may include, but are not limited to:

- (1) Requiring payments as reimbursements rather than advance payments;
- (2) Withholding authority to proceed to the next phase until receipt of evidence of acceptable performance within a given period of performance;
- (3) Requiring additional, more detailed financial reports;
- (4) Requiring additional project monitoring;
- (5) Requiring the non-Federal entity to obtain technical or management assistance; or
- (6) Establishing additional prior approvals.

(B) When imposing additional specific award requirements, DOE or the pass-through entity must notify the non-Federal entity in writing as to:

- (1) The nature of the additional requirements;
- (2) The reason why the additional requirements are being imposed;

- (3) The nature of the action needed to remove the additional requirement, if applicable;
- (4) The time allowed for completing the actions if applicable;
- (5) The method for requesting reconsideration of the additional requirements imposed, and;
- (6) Which actions authorized under 2 CFR 200.338 DOE may take if the non-Federal entity does not achieve compliance by the time specified in the notice, or does not provide satisfactory assurances that actions have been initiated that will achieve compliance in a timely manner.

Any additional specific award conditions must be promptly removed once the conditions that prompted them have been corrected.

(C) If DOE or the pass-through entity determines that the noncompliance cannot be remedied by imposing the additional specific award conditions, DOE or the pass-through entity may take one or more of the following actions, as appropriate in the circumstances:

- (1) Temporarily withhold cash payments pending correction of the deficiency by the non-Federal entity or more severe enforcement action by the Federal awarding agency or pass-through entity.
- (2) 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.
- (3) Wholly or partly suspend or terminate the Federal award.
- (4) Initiate suspension or debarment proceedings as authorized under 2 CFR part 180 and Federal awarding agency regulations (or in the case of a pass-through entity, recommend such a proceeding be initiated by a Federal awarding agency).
- (5) Withhold further Federal awards for the project or program.
- (6) Take other remedies that may be legally available.

6.3 Suspension and Termination

(A) In accordance with 2 CFR 200.338 - 200.342, DOE or the pass-through entity may wholly or partly suspend or terminate an award. Before suspending or terminating an award, DOE or the pass-through entity must provide the recipient a separate written notice sent by means that provide proof of delivery (e.g., email with read receipt, certified mail, return receipt requested) prior to the effective date of the suspension or termination. The Notice of Suspension or Termination should be sent **at least ten days** prior to the effective date, and should include the following information and instructions as appropriate:

- (1) The factual and legal bases for the suspension or termination;

- (2) The effective date or dates of the suspension or termination;
- (3) A description of the activities affected by the suspension or termination (e.g., entire award or selected activities);
- (4) Instructions concerning which costs will be allowable during the period of suspension, or instructions concerning allowable termination costs, and instructions concerning costs for any subawards or contracts;
- (5) Instructions concerning required final reports and other closeout actions for the terminated award;
- (6) Instructions concerning satisfactory corrective actions required to cancel the suspension;
- (7) If the Federal award is terminated for the non-Federal entity's failure to comply with the Federal statutes, regulations, or terms and conditions of the Federal award, the Notification must state that the termination decision may be considered in evaluating future applications received from the non-Federal entity.
- (8) A statement of the recipient's right to appeal a termination for cause; and
- (9) The signature of the DOE GO and date signed.

(B) Suspension. Unless DOE and the recipient agree otherwise, no period of suspension should exceed 90 days. DOE may cancel the suspension at any time, up to and including the date of expiration of the period of suspension, if the recipient takes satisfactory corrective action before then or gives DOE satisfactory evidence that corrective action will be taken. If the suspension has not been canceled by the expiration date of the period of suspension, the recipient may resume the suspended activities or project, unless, prior to the expiration date, DOE notifies the recipient in writing that the period of suspension will be extended or that the award will be terminated.

As of the effective date of suspension, DOE will withhold further payments and should allow new obligations to be incurred by the recipient during the period of suspension only if such costs were authorized in the Notice of Suspension or in a subsequent letter from the GO.

If the suspension is canceled or expires and the award is not terminated, DOE will reimburse the recipient for any authorized allowable costs incurred during the suspension and, if necessary, may amend the award to extend the period of performance.

(C) Termination. The DOE award may be terminated in whole or in part as follows:

- (1) By DOE or the pass-through entity, if a non-Federal entity fails to comply with the terms and conditions of a Federal award;

(2) By DOE or the pass-through entity for cause;

(3) By DOE or the pass-through entity with the consent of the non-Federal entity, in which case the two parties must agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated; or

(4) By the non-Federal entity upon sending to DOE or the pass-through entity written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated (and include an appropriate budget revision). However, if the DOE or the pass-through entity determines in the case of partial termination that the reduced or modified portion of the Federal award or subaward will not accomplish the purposes for which the Federal award was made, DOE or the pass-through entity may terminate the Federal award in its entirety.

The recipient shall not incur any new obligations after the effective date of the termination of an award, or portion thereof, and shall cancel as many outstanding obligations as possible. DOE will allow full credit to the recipient for the DOE share of non-cancellable obligations properly incurred by the recipient prior to the effective date of the termination.

When an award is terminated or partially terminated, both DOE or the pass-through entity and the non-Federal entity remain responsible for compliance with the requirements in §§200.343 *Closeout* and 200.344 *Post-closeout adjustments and continuing responsibilities*.

Upon termination of a Federal award for failure to comply with the Federal statutes, regulations, or terms and conditions of the Federal award, DOE must provide the information required under FFATA to the Federal Web site established to fulfill the requirements of FFATA, and update or notify any other relevant government-wide systems or entities of any indications of poor performance as required by 41 U.S.C. 417b and 31 U.S.C. 3321 and implementing guidance at 2 CFR Part 77 (forthcoming at time of publication). See also the requirements for Suspension and Debarment at 2 CFR Part 180.

Note: USASpending.gov is the current web site where data required by FFATA is posted. It has not yet been modified to allow reporting of termination actions by Federal Agencies.

(D) Costs. 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 DOE or the pass-through entity expressly authorizes them in the Notice of Suspension or Termination or in a subsequent letter from the GO. However, costs during suspension or after termination are allowable if the costs:

(1) Result from obligations which were properly incurred by the non-Federal entity before the effective date of suspension or termination;

(2) Are not in anticipation of the suspension or termination;

(3) In the case of a termination, are non-cancellable; and

(3) 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.

(E) Relationship to debarment and suspension. The enforcement remedies identified in this section, including suspension and termination, do not preclude a recipient from being subject to debarment and suspension under 2 CFR part 901.

6.4 Disputes and Appeals

DOE or the pass-through entity will provide the non-Federal entity an opportunity to object and provide information and documentation challenging the suspension or termination action, in accordance with written processes and procedures in 2 CFR 910.128. DOE or the pass-through entity must comply with any statutory or agency requirements for hearings, appeals or other administrative proceedings to which the non-Federal entity is entitled under any statute or regulation applicable to the action involved.

Non-Federal entities should promptly notify the GO in writing of any disputes arising from the administration of their award. Whenever there is a dispute, both the non-Federal entity and the GO will make a good faith effort to resolve the dispute by openly discussing the matter and attempting to reach a resolution.

(A) *Informal dispute resolution*. Whenever practicable, DOE shall attempt to resolve informally any dispute over the award or administration of Federal financial assistance. Informal resolution shall be preferred method of dispute resolution, to the extent practicable.

(B) *Alternative dispute resolution (ADR)*. Before issuing a final determination in any dispute in which informal resolution has not been achieved, the GO shall suggest that the other party consider the use of voluntary consensual methods of dispute resolution, such as mediation. The DOE dispute resolution specialist is available to provide assistance for such disputes, as are trained mediators of other federal agencies. ADR may be used at any stage of a dispute.

(C) *Final determination*. Whenever a dispute is not resolved mutually through the processes identified in (A) or (B) of this section, DOE shall deliver a brief written determination, signed by a GO, setting forth DOE's final disposition of such dispute using a delivery method that provides evidence of receipt by the non-Federal entity. Such determination shall contain the following information:

(1) A summary of the dispute, including a statement of the issues and of the positions taken by DOE and the party or parties to the dispute; and

(2) The factual, legal and, if appropriate, policy reasons for DOE's disposition of the dispute.

(D) *Right of appeal*. Except as provided in paragraph (F)(1) of this section, the final determination under paragraph (C) of this section may be appealed to the cognizant Senior

Procurement Executive (SPE) for either DOE or the National Nuclear Security Administration (NNSA).

The following procedures are established for submitting an appeal to the SPE:

(1) Appeals shall be concise and logically presented to facilitate review by the SPE. Failure to comply with any of the requirements of paragraphs (D)(2), (D)(3), and (D)(4) of this section may be grounds for dismissal of the appeal.

(2) All appeals shall be written and include the following information:

(a) Name, physical address, email address and fax and telephone numbers of the appellant.

(b) DOE award number.

(c) Detailed statement of the legal and factual grounds for the appeal of the GO's final decision, to include a description of resulting prejudice to the appellant.

(d) Copies of relevant documents.

(e) Request for a ruling by the SPE.

(f) Statement as to the form of relief requested.

(g) All information establishing that the appellant is an interested party for the purpose of filing an appeal.

(h) All information establishing the timeliness of the appeal.

(3) All appeals must be mailed directly to the SPE using a method that provides evidence of receipt. The mailing address for the DOE SPE is Office of Acquisition Management, 1000 Independence Ave., SW, Washington, DC 20585. The mailing address for the NNSA SPE is Office of Acquisition Management, 1000 Independence Ave., SW, Washington, DC 20585.

(4) Appeals shall be filed no later than 90 days after receipt of the final determination or decision made by the GO.

(E) *Effect of appeal.* The filing of an appeal with the SPE shall not stay any determination or action taken by DOE which is the subject of the appeal. Consistent with its obligation to protect the interests of the Federal Government, DOE may take such authorized actions as may be necessary to preserve the status quo pending decision by the SPE, or to preserve its ability to provide relief in the event the SPE decides in favor of the appellant.

(F) *Review on appeal.*

(1) The SPE shall have no jurisdiction to review:

(a) Any pre-award dispute (except as provided in paragraph (F)(2)(b) of this section), including use of any special restrictive condition pursuant to 2 CFR 200.207 Specific Conditions;

(b) DOE denial of a request for an Exception under 2 CFR 200.102;

(c) DOE denial of a request for a budget revision or other change in the approved project under 2 CFR 200.308 or 200.403 or under another term or condition of the award;

(d) Any DOE action authorized under 2 CFR 200.338, Remedies for Noncompliance, or such actions authorized by program rule;

(e) Any DOE decision about an action requiring prior DOE approval under 2 CFR 200.324 or under another term or condition of the award;

(2) In addition to any right of appeal established by program rule, or by the terms and conditions (not inconsistent with paragraph (F)(1) of this section) of an award, the SPE shall have jurisdiction to review:

(a) A DOE determination that the recipient has failed to comply with the applicable requirements of this part, the program statute or rules, or other terms and conditions of the award;

(b) A DOE decision not to make a continuation award based on any of the determinations described in paragraph (F)(2)(i) of this section;

(c) Termination of an award, in whole or in part, by DOE under 2 CFR 200.339 (a)(1)-(2);

(d) A DOE determination that an award is void or invalid;

(e) The application by DOE of an indirect cost rate; and

(f) DOE disallowance of costs.

(3) In reviewing disputes authorized under paragraph (F)(2) of this section, the SPE shall be bound by the applicable law, statutes, and rules, including the requirements of this part, and by the terms and conditions of the award.

(4) The decision of the SPE shall be the final decision of the Department and shall be well-reasoned, and logically explain the agency position. The appeal decision shall be provided to the appellant using a method that provides evidence of receipt.

CHAPTER 7 – CLOSEOUT

7.1 Regulatory Requirements

As prescribed by 2 CFR Part 200.343:

The DOE or pass-through entity will close-out the Federal award when it determines that all applicable administrative actions and all required work of the Federal award have been completed by the non-Federal entity. This section specifies the actions the non-Federal entity and DOE or pass-through entity must take to complete the Closeout process at the end of the period of performance.

(A) The non-Federal entity must submit, **no later than 90 calendar days after the end date of the period of performance**, all financial, performance, and other reports as required by the terms and conditions of the Federal award. The DOE or pass-through entity may approve extensions when requested by the non-Federal entity.

(B) Unless DOE or pass-through entity authorizes an extension, a non-Federal entity must liquidate all obligations incurred under the Federal award not later than 90 calendar days after the end date of the period of performance as specified in the terms and conditions of the Federal award.

(C) DOE or pass-through entity must make prompt payments to the non-Federal entity for allowable reimbursable costs under the Federal award being closed out.

(D) The non-Federal entity must promptly refund any balances of unobligated cash that DOE or the pass-through entity paid in advance or paid and that are not authorized to be retained by the non-Federal entity for use in other projects. See OMB Circular A-129 and see 2 CFR §200.345 *Collection of amounts due*, for requirements regarding unreturned amounts that become delinquent debts.

(E) Consistent with the terms and conditions of the Federal award, DOE or the pass-through entity must make a settlement for any upward or downward adjustments to the Federal share of costs after closeout reports are received.

(F) The non-Federal entity must account for any real and personal property acquired with Federal funds or received from the Federal Government in accordance with 2 CFR 200.310 *Insurance coverage* through 2 CFR 200.316 *Property trust relationship* and 2 CFR 200.329 *Reporting on real property*.

(G) Even though the regulations do not require this, DOE or the pass-through entity should make every effort to complete all closeout actions for Federal awards no later than one year after receipt and acceptance of all required final reports.

7.2 DOE Specific Closeout Instructions (SEPT 2020)

(A) The Closeout process includes verifying that the following have been accomplished at the expiration of the acquisition or assistance instrument:

- (1) all terms and conditions have been fulfilled;
- (2) all property issues have been resolved;
- (3) all patent and data issues have been resolved;
- (4) all necessary and required reports have been properly submitted to the government in accordance with the Federal Assistance Reporting Checklist and the terms and conditions of the award; and
- (5) all required financial data and other related information has been submitted and resolved.

When all conditions have been met and the final cost has been determined, final payment can be made to the recipient and the instrument may be closed out. In the event a final audit has not been performed prior to the closeout of the grant, DOE reserves the right to recover appropriate amounts after fully considering the recommendations on disallowed costs resulting from the final audit.

(B) The Federal Assistance Reporting Checklist may indicate some or all of the following reports as being required at time of Closeout:

- (1) the final performance or progress report;
- (2) Scientific/Technical reports and STI products, as applicable;
- (3) the Financial Status Report (SF-425);
- (4) the Final Request for Payment (SF-270); if applicable,
- (5) the patent certification, if applicable; and
- (6) a listing of property furnished by DOE or acquired under the award.

The financial assistance award file should be reviewed for completeness to assure that it contains sufficient information on which to base the decision to close out the award. Closeout activities include financial/audit reconciliations and clearances; acceptance the final scientific/technical report and other required STI products, including verification of the announcement and/or submission of the final scientific/technical report and other required STI to E-Link, as applicable; property reconciliation and disposal; and intellectual property/patent reconciliation and clearance.

7.3 DOE Required Clearances

(A) Final scientific/technical report and other STI submitted to OSTI

The final scientific/technical and other STI products should be submitted electronically via the Office of Scientific and Technical Information's (OSTI) E-Link system located at: <https://www.osti.gov/mlink/>. OSTI will notify the DOE site that is responsible for closeout of the award Officer by email that the STI is ready for review and release in E-Link. The DOE site that receives the email will assign an E-Link Releasing Official. Only final scientific/technical reports and conference papers and proceedings are subject to review and release in E-Link by identified E-Link Releasing Official. The E-Link Releasing Official must conduct a review to ensure that the STI (final scientific/technical report or conference paper or proceeding) does not contain any Personally Identifiable (PII). After verification, the E-Link Releasing Official will make the appropriate acknowledgments in E-Link before releasing final scientific/technical report or conference paper or proceeding.,

If PII is detected or suspected during the review, it should be marked by the E-Link Releasing Official, and request that the submitter change the report to delete or modify the sections in question before releasing the STI in E-Link..

It is vital that no PII information be made public. PII is any information about an individual, including but not limited to, education; financial transactions; medical, criminal or employment history; and information that can be used to distinguish or trace an individual's identity, such as his/her name, social security number, date and place of birth, mother's maiden name, biometric data (e.g., fingerprint, iris scan, DNA), etc., and including any other personal information that is linked or linkable to a specific individual.

For STI submissions that appears to contain Unclassified Controlled Nuclear Information (UCNI); STI, it is important to ensure this STI is marked and managed appropriately before release in E-Link, and it is the responsibility of the Releasing Official to check that the final scientific/technical report or conference paper or proceeding has been submitted with the proper IP/Distribution Limitation in E-Link, and that any markings on the document are appropriate and consistent with the identified IP/Distribution Limitation. For more information on handling CUI, as part of the release process please visit <https://www.osti.gov/stip/controlled>.

(B) Property Clearance (Other than Intangible Property).

For personal property (including equipment), recipients are required to complete the

SF-428 Tangible Personal Property Report forms SF-428 and SF-428-B.

Also the SF-428 C if the recipient is requesting disposal instructions for personal property.

The SF-428 forms are available under the REPORTING FORMS at:

<https://energy.gov/management/office-management/operational-management/financial-assistance/financial-assistance-forms>.

The SF-428 is the cover page and the submitter attaches the appropriate form or forms as listed on the SF-428.

The SF-428B is the Final Award Closeout Report, due at award completion. See Guide to Financial Assistance Chapter 4, Subchapter 4.8 Property for further details.

For real property, the recipients are required to complete the **SF-429 Real Property Status Report**. The SF-429 form is available under the REPORTING FORMS at: <https://energy.gov/management/office-management/operational-management/financial-assistance/financial-assistance-forms>.

(C) Intellectual Property.

If applicable, the recipient must provide a final DOE F 2050.11, Patent Certification, <https://energy.gov/sites/prod/files/SF-2050.11%2C%20Patent%20Certification.pdf> at the end of the project period. The Patent Certification should be forwarded to the cognizant patent counsel for review and clearance. The list designating cognizant patent counsel can be found at <https://energy.gov/gc/downloads/intellectual-property-ip-service-providers-acquisition-and-assistance-transactions>.

(D) Financial Reports.

Recipients must complete the financial reports identified on the Federal Assistance Reporting Checklist in accordance with the report instructions identified in the basic award. These reports include the SF-425, the Federal Financial Status Report; the SF-270, Request for Advance or Reimbursement; and SF-271, the Request for Advance or Reimbursement for Construction Projects. These forms are all posted on the DOE Financial Assistance web site under the REPORTING FORMS at: <https://energy.gov/management/office-management/operational-management/financial-assistance/financial-assistance-forms>. These required reports should be reviewed to ensure appropriate use of the funds provided under the award and for verifying that the cost share requirements were fulfilled.

The GO should determine if other financial reports, such as the annual indirect cost submission and the audit required by the Single Audit Act as implemented by 2 CFR 200 Subpart F and 2 CFR 910 Subpart F have been submitted by the recipient.

For large dollar or complex awards, the GO may wish to have an incurred cost audit performed to verify funds were spent appropriately.

7.4 Post-closeout adjustments and continuing responsibilities

As prescribed by 2 CFR Part 200.344:

(A) The closeout of a Federal award does not affect any of the following:

- (1) The right of DOE or the pass-through entity to disallow costs and recover funds on the basis of a later audit or other review. DOE or the pass-through entity must make any cost disallowance determination and notify the non-Federal entity within the record retention period.
- (2) The obligation of the non-Federal entity to return any funds due as a result of later refunds, corrections, or other transactions including final indirect cost rate adjustments.

(3) Audit requirements in Subpart F of 2 CFR 200 and 910.

(4) Property management and disposition requirements in Subpart D—Post Federal Award Requirements of this part, 2 CFR200.310 *Insurance Coverage* through 200.316 *Property trust relationship*.

(5) Records retention as required in Subpart D—Post Federal Award Requirements of this part, 2 CFR200.333 *Retention requirements for records* through 200.337 *Restrictions on public access to records*.

(B) After closeout of the Federal award, a relationship created under the Federal award may be modified or ended in whole or in part with the consent of DOE or the pass-through entity and the non-Federal entity, provided the responsibilities of the non-Federal entity referred to in paragraph (A) of this section, including those for property management as applicable, are considered and provisions made for continuing responsibilities of the non-Federal entity, as appropriate.

CHAPTER 8 – FREEDOM OF INFORMATION ACT

8.1 Freedom of Information Act Requests

The Freedom of Information Act (FOIA) (5 U.S.C. § 552) provides that any person or organization (excluding Federal agencies) has the right to file a FOIA request access to Federal agency records. In general, all agency records must be made available to the public unless they fall under one of nine FOIA exemptions:

- (1) Properly classified as secret;
- (2) Related to an agency's internal personnel rules and practices;
- (3) information that is prohibited from disclosure by another federal law
- (4) Trade secrets and commercial or financial information obtained from a person which is privileged or confidential;
- (5) Interagency or intra-agency communications that are protected by a legal privilege;
- (6) Personnel and medical files that would constitute a clearly unwarranted invasion of personal privacy;
- (7) Compiled for law enforcement purposes;
- (8) Contained in records concerning financial institutions; or
- (9) Geological or geophysical-related documents concerning wells.

8.1.1 The FOIA Process

Any agency employee who receives a request for agency records should immediately direct the requester and/or any written request to the applicable FOIA Officer. After receipt of a formal FOIA request, the FOIA Officer will coordinate with the appropriate GO and project personnel to identify and review responsive documents, and to contact relevant submitters for input concerning the applicability of potential FOIA exemptions.

When DOE determines requested information should be protected from public disclosure by one of the FOIA exemptions, the documents will be properly withheld or redacted. The applicable Authorizing or Denying Official will ultimately respond to the FOIA requester with a determination letter identifying the documents being produced, withheld or redacted, and explaining the application of any FOIA exemptions.

Because these activities are subject to statutorily imposed time deadlines, prompt attention to FOIA requests is imperative.

8.1.2 Commonly Requested Information

(A) The following list identifies some of the most commonly requested documents requested under FOIA related to financial assistance transactions:

- (1) Applications
- (2) Grant application reviewer information (comments, evaluations, reviewer lists)
- (3) Lists of applicants
- (4) Selection Statements
- (5) Procedures for the Review of Applications
- (6) Reports

Certain information contained in financial assistance applications should not be released. Some of the information in the award file may be releasable under FOIA. Often, however, information contained in the award file falls within the protective scope of one or more of the FOIA exemptions. It is therefore critical that these documents be reviewed by the appropriate FOIA Officer and knowledgeable GO, project, and legal personnel before any information is released.

Although any of the nine FOIA exemptions may address all or part of a particular document, the provisions of Exemption 3 (exempted by statute), Exemption 4 (confidential business and financial information), Exemption 5 (deliberative process privilege) and Exemption 6 (unwarranted invasion of personal privacy) are those most often applicable. (5.U.S.C. § 552(b) (3), (b) (4), (b) (5) and (b) (6)).

As a matter of general guidance, information that may be released in an award file includes:

(1) The Assistance Agreement Form (prior to the implementation of STRIPES the award form used was the Notice of Financial Assistance Award).

(2) The names of the project director and other key staff as well as general descriptions of the duties/activities of staff or the qualifications of key positions when these are specified in the application.

(3) The resumes or vitae of staff working on a project when they are included in the application. These documents must be reviewed and redacted as appropriate for the types of personal information that would fall under Exemption 6 of the FOIA (5 U.S.C. §552(b)(6)).

(4) Limited information regarding the project's total budget figures. Although the total project cost, DOE's total cost share amount, and the recipient's cost share may be broken out separately, other itemized budgetary information is most often protected from disclosure under FOIA by the provisions of Exemption 4.

(5) Requests submitted by a recipient to amend its original award and the response to the request.

(6) General award documents, such as informal notes taken by the program staff from telephone discussions with grantees, e-mails, post-it note reminders on a particular matter, site visit reports, and customized forms that are used as part of managing and monitoring a grant and which are later placed into the official file.

(7) Merit review consensus comments, which are provided to recipients following the merit review process. The names of any reviewers, however, are protected from public disclosure under FOIA Exemptions 5 and 6, and must be redacted from the completed consensus forms.

(B) Information that may not be released in applications includes:

(1) Private information about individuals who are working on a grant project which would constitute a clearly unwarranted invasion of privacy such as:

- (a) Names and other personal information of individuals that are the subject of research activities;
- (b) Names of spouses and children of project personnel;
- (c) Home and personal cellular phone numbers;
- (d) Home and personal email addresses;
- (e) Social Security numbers;
- (f) Medical records; and
- (g) Dates of birth.

(2) The salaries and fringe benefits of project staff.

(3) Confidential commercial or financial information that may cause competitive harm to a person or organization. Information that fall under this category could be:

- (a) Trade secrets (a formula, an exclusive design, a computer program);
- (b) Research and development activities; and
- (c) Commercial or other financial data of an organization.
- (d) Information concerning a recipient's actual costs, direct and indirect costs, pricing strategies, break-even calculations, profits, profit rates, or profit margins;
- (e) Workforce data that reveals labor costs, fringe benefits, or names of consultants or subcontractors.

Note: Prior to releasing information that may fall within Exemption 4; DOE is required by Executive Order to seek the views of the person or organization who submitted the information regarding its potential confidential nature. The appropriate FOIA Officer is responsible for obtaining the submitter's views, including supporting justification for an assertion of competitive harm, prior to DOE's determination regarding public release of the requested information. The FOIA Officer must also inform the submitter of DOE's determination prior to releasing such information.

8.1.3 Withholding Exempted Information

In some instances, all of the information in a FOIA request is exempt from disclosure. In other cases, documents can be released if the exempted material is redacted. When information must be redacted from the document by blocking out with a marker or removing the entire page from the materials, care must be taken to ensure that all redacted information cannot be seen. When the documents are in a digitized format, particular care should be taken to ensure that withheld information cannot be recovered by the requester.

As previously noted, it is important that all DOE procurement and project personnel work closely with the appropriate FOIA Officer and legal counsel to provide a timely response to any FOIA request.

GLOSSARY

Definitions are only included in this Glossary if they cannot be found in 2 CFR 200 or 2 CFR 910.

Application A written request for financial assistance.

Amendment An amendment is the written document executed by a DOE GO that changes one or more provisions or terms or conditions of an existing funding opportunity announcement or financial assistance award. Amendments are used to approve changes to the budget or in project activities, increase funding, and extend budget or project periods.

Discretionary Award An award executed under the authority of a Federal statute that permits DOE to exercise judgment in selecting the recipient and the project to be supported, and in determining the dollar amount of Federal and non-Federal support to be provided.

Effective Date The date specified in the Assistance Agreement form on or after which expenditures may be charged to the award. If no effective date is specified, then the beginning date of the period of performance for the award is the effective date.

Formula Grant A grant DOE is required to make to one or more eligible applicants who meet statutory prerequisites for award. The amount of the award is determined by a formula specified in the authorizing legislation or program regulations.

Principal Investigator The researcher, scientist or other individual designated by the recipient to direct the research and development aspects of the project.

Project The set of activities described in an application, State plan, or other document that is submitted by an applicant and reviewed by DOE for consideration of award of financial assistance (whether such financial assistance represents all or only a portion of the support necessary to carry out those activities.)

Requisition A request prepared and submitted in STRIPES by a program or project office which authorizes a GO to initiate a Notice of Funding Opportunity (FOA), make a new award, or modify an existing award.

Solicitation A document which requests submission of an application from a single applicant for a directed financial assistance award. The solicitation is used when a funding opportunity announcement is not necessary. The solicitation describes the necessary forms and information the applicant must submit to DOE in order to receive the directed award.

Terms and Conditions The rights and obligations of the Federal awarding agency or pass-through entity and the recipient or subrecipient set forth in statute, program rule, or otherwise included or incorporated by reference in the award or subaward document.

Unsolicited Proposal A written request for DOE support of a project which is submitted without a Funding Opportunity Announcement (FOA) or a solicitation issued by DOE.