

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 – April 1, 2024

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

Effective April 1, 2024

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.
- Current changes to the document will be annotated with MAR 2024, significant changes are identified and described below.

Significant Changes, Clarifications and Other Changes to the GFA

- Subsection 2.5.15 Subaward Requirements (A) *SAM and UEI Requirements* has been updated to and revise to be consistent with the changes in SAM.gov that now allows an option for subawardees to obtain an UEI without full SAM registration.
- Subchapter 2.6 Congressional Notifications (C) *Advance Notification of Award System (ANA)* has been updated and revised to included updated links to the ANA user guide and update references from iManage to CBS.

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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 \$3 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 Acquisition and Project 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 at: DOE_oapmpolicy@hq.doe.gov.

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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), provide authority for DOE to enter into financial assistance agreements. Generally, these program authorizing 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 and Contracting Officer (AUG 2021)

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 reference to Grants Officer or GO in this guide is meant to include the Contracting Officer or CO. These terms are used interchangeably when referring to the DOE professional who is certified and authorized to execute and administer financial assistance awards for the Department. The following activities are the responsibility of the Grants/Contracting Officer (GO or CO) or a designated representative. The GO should consult and coordinate with appropriate officials such as program staff, legal counsel, and servicing finance officers, 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.
- The GO/CO may also delegate some or all of his or her responsibility for monitoring, overseeing or approving specific award and administration issues to a Technical Project Officer (TPO) either within Headquarters or a field activity.

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 Assistance Listing Number for its program funding opportunity announcements and awards.

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 Program Planning, Design, and Performance Measurement (AUG 2021)

Prior to requesting a new Assistance Listing, DOE must have designed a program and have an Assistance Listing Number created for the designated program before announcement of a FOA in accordance with the regulations in 2 CFR 200.202. DOE Programmatic Offices must ensure that the program includes clear goals and objectives that facilitate the delivery of meaningful results consistent with the program authorizing statute. Program performance shall be measured based on the goals and objectives developed during program planning and design. See Performance Measurement §200.301 for more information on performance measurement. Performance measures may differ depending on the type of program. The program must align with the strategic goals and objectives within the Federal awarding agency's performance plan and should support the Federal awarding agency's performance measurement, management, and reporting as required by Part 6 of OMB Circular A-11 (Preparation, Submission, and Execution of the Budget). The program must also be designed to align with the Program Management Improvement Accountability Act (Pub. L. 114-264).

- (a) The Federal awarding agency must measure the recipient's performance to show achievement of program goals and objectives, share lessons learned, improve program outcomes, and foster adoption of promising practices. Program goals and objectives should be derived from program planning and design. See §200.202 for more information. Where appropriate, the Federal award may include specific program goals, indicators, targets, baseline data, data collection, or expected outcomes (such as outputs, or services performance or public impacts of any of these) with an expected timeline for accomplishment. Where applicable, this should also include any performance measures or independent sources of data that may be used to measure progress. The Federal awarding agency will determine how performance progress is measured, which may differ by program. Performance measurement progress must be both measured and reported. See §200.329 for more information on monitoring program performance. The Federal awarding agency may include program-specific requirements, as applicable. These requirements must be aligned, to the extent permitted by law, with the Federal awarding agency strategic goals, strategic objectives or performance goals that are relevant to the program. See also OMB Circular A-11, Preparation, Submission, and Execution of the Budget Part 6.

1.4 Assistance Listings and the Catalog of Federal Domestic Assistance (AUG 2021)

In 1977 Congress passed the Federal Program Information Act. This Act established a comprehensive and centralized foundation for the annual publication of federal domestic assistance programs. The General Services Administration (GSA) maintains the federal assistance information data base and the System for Award Management (SAM). The database captures Federal financial assistance program information from each Agency's unique program Assistance Listing and publishes a Catalog of Federal Domestic Assistance (CFDA) in SAM.

The SAM website (Sam.gov) replaced the old CFDA website (CFDA.gov) as the source to assist users and potential applicants find general information about Federal domestic assistance programs, identify program objectives, eligibility requirements, and links to current opportunities on Grants.gov. Each Agency's program Assistance Listing, however, continues to be assigned and associated with a unique five-digit CFDA number (##.###), and is listed and published annually in the CFDA.

The Assistance Listings listed in the CFDA found on SAM is organized by the CFDA Number associated with a specific DOE program and provides detailed, public descriptions of domestic assistance programs available to State and local governments (including the District of Columbia); federally recognized Indian tribal governments, Territories (and possessions) of the United States; domestic public, quasi- public, and private profit and nonprofit organizations and institutions; specialized groups, and individuals.

As of 2020, DOE programs fall under the following Assistance Listings/CFDA numbers found in the CFDA published on SAM.gov:

- 81.005 Environmental Monitoring, Independent Research, Technical Analysis (B)
- 81.08 Cybersecurity, Energy Security & Emergency Response (CESER) (B)
- 81.09 Molybdenum-99 Program (B)
- 81.10 Office of Technology Transitions (OTT)-Technology Deployment, Demonstration and Commercialization (B)
- 81.036 Inventions and Innovations (B, K, L)
- 81.041 State Energy Program (A, L)
- 81.042 Weatherization Assistance for Low-Income Persons (A)
- 81.049 Office of Science Financial Assistance Program (B)
- 81.057 University Coal Research (B)
- 81.065 Nuclear Legacy Cleanup Program (B, C)
- 81.079 Regional Biomass Energy Programs (B)
- 81.086 Conservation Research and Development (B)
- 81.087 Renewable Energy Research and Development (B)
- 81.089 Fossil Energy Research and Development (B)
- 81.092 Remedial Action and Waste Management (B)
- 81.102 Student Driven Research and Long Term Monitoring of Selected Populations in the Valley and Ridge Eco-region
- 81.104 Environmental Remediation and Waste Processing and Disposal (B)
- 81.105 National Industrial Competitiveness through Energy, Environment, and Economics (B)
- 81.106 Transport of Transuranic Wastes to the Waste Isolation Pilot Plant: States and Tribal Concerns, Proposed Solutions
- 81.108 Epidemiology and Other Health Studies Financial Assistance Program (B)
- 81.112 Stewardship Science Grant Program (B)
- 81.113 Defense Nuclear Nonproliferation Research (B)
- 81.117 Energy Efficiency and Renewable Energy Information Dissemination, Outreach, Training and Technical Analysis/Assistance (B)
- 81.119 State Energy Program Special Projects (B)
- 81.121 Nuclear Energy Research, Development and Demonstration (B)
- 81.122 Electricity Research, Development and Analysis (B)
- 81.123 National Nuclear Security Administration (NNSA) Minority Serving Institutions (MSI) Program (B)
- 81.124 Predictive Science Academic Alliance Program (B)
- 81.126 Federal Loan Guarantees for Innovative Energy Technologies (E, F)
- 81.127 Energy Efficient Appliance Rebate Program (EEARP) (A, B)
- 81.128 Energy Efficiency and Conservation Block Grant Program (EECBG) (A, B)
- 81.129 Energy Efficiency and Renewable Energy Technology Deployment, Demonstration and Commercialization (B)
- 81.131 Expand and Extend Clean Coal Power Initiative (B)

- 81.135 Advanced Research Projects Agency - Energy (B)
- 81.136 Long-Term Surveillance and Maintenance (B)
- 81.137 Minority Economic Impact (A, B)
- 81.138 State Heating Oil and Propane Program (B, Z)
- 81.139 Environmental Management R&D and Validation Testing on High Efficiency Particulate Air (HEPA) Filters (B, Z)
- 81.140 Los Alamos National Laboratory - Fire Protection (B)
- 81.214 Environmental Monitoring/Cleanup, Cultural and Resource Mgmt., Emergency Response Research, Outreach, Technical Analysis (B)
- 81.250 Energy Policy and Systems Analysis (B)

Any questions or comments regarding DOE's Assistance Listings or the associated CFDA numbers should be sent to the Assistance Listing coordinator for DOE – Terri Diehl (terri.diehl@hq.doe.gov or 202-287-1878).

Any Program Offices that are authorized to provide or award financial assistance are required to establish and maintain an Assistance Listing with an active CFDA number in the Assistance Listing database and CFDA prior to initiating any financial assistance actions. The Program Office must use the appropriate and active CFDA number associated with their program's Assistance Listing 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 Assistance Listings information and CFDA numbers. A yearly review of the Assistance Listing/CFDA information is required by the Program Office to ensure the information is up-to-date.

For each domestic assistance program authorized by law, the Assistance Listing database is required to:

1. Identify each authorized program by title, authorizing statute, administering office and an assigned number;
2. Describe the program, objectives of the program, and types of activities funded by the program;
3. Describe the eligibility requirements, formulas governing distribution, types of assistance, uses and restrictions on use of assistance, and duties of recipients under the program;
4. Provide financial information including the amount of funds appropriated for the current fiscal year;
5. Identify information contacts including the administering office and regional and local offices; and
6. Provide a general description of any application requirements and procedures.

Additional program information that is required by 2 CFR 200.203(b) to be included in an Assistance Listing includes:

1. Program Description, Purpose, Goals, and Measurement;
2. Identification (discretionary or non-discretionary awards);
3. Projected total amount of funds available for the program;
4. Anticipated source of available funds;
5. General eligibility requirements; and
6. Applicability of Single Audit Requirements (Single, Program or Compliance Audits).

Each program entry in the Assistance Listing must include 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 associated with their program's Assisting Listing in the Assistance Module at: <https://sam.gov/> and include it on the requisition used to initiate the FOA or award.

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 GO should contact the program office 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 Office representative has any questions, or needs assistance setting up a new, or updating a current, Assistance Listing or CFDA number for their program, they must consult the Assistance Listing coordinator for DOE – Terri Diehl (terri.diehl@hq.doe.gov or 202-287-1878).

1.5 Financial Assistance Career Management Program

DOEs Acquisition Workforce consist of a broad range of financial assistance professional and technical personnel including: Grants Specialists/Grants Officer, 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 financial assistance 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 at: https://powerpedia.energy.gov/wiki/Acquisition_Career_Management_Program_and_in_DOE_Order_361.1 "Acquisition Career Management Program".

1.6 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.

1.7 National Policy Requirements (AUG 2021)

The Federal awarding agency must manage and administer the Federal award in a manner so as to ensure that Federal funding is expended and associated programs are implemented in full accordance with the U.S. Constitution, Federal Law, and public policy requirements: Including, but not limited to, those protecting free speech, religious liberty, public welfare, the environment, and prohibiting discrimination. The Federal awarding agency must communicate to the non-Federal entity all relevant public policy requirements, including those in general appropriations provisions, and incorporate them either directly or by reference in the terms and conditions of the Federal award.

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 subsections 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.

1.7.1 Non-Discrimination Statutes and Policies (AUG 2021)

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 (AUG 2021)

E.O. 13798, advises Agencies to “ensure that the terms of the Federal grants they award make clear that states or other public grantees may not condition sub-awards of Federal grant money in a manner that would disadvantage grant applicants based on their religious character.”

(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.

1.7.2 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.

1.7.3 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).

1.7.4 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

(G) Domestic Preferences

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 November 12, 2020.

1.7.5. Never Contract with the Enemy (AUG 2021)

All DOE awardees are subject to the regulations implementing Never Contract with the Enemy in 2 CFR part 183. Contracts, grants and cooperative agreements that exceed a threshold of \$50,000 and will be performed outside of the United States and its territories, DOE is authorized to examine any records of the recipient and its subawards or contracts to the extent necessary to ensure that funds, including supplies and services, available under the grant or cooperative agreement are not provided, directly or indirectly, to a person or entity that is actively opposing United States or coalition forces involved in a contingency operation in which members of the Armed Forces are actively engaged in hostilities.

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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 transaction determination 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 (AUG 2021)

(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 for all non-competitive financial assistance actions **except** when the original FOA was published and included the use of phases, go/no-go decisions, continuations, and renewals. 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, but not more often than quarterly. 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 TPO/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 to include OMB approved common information collections as applicable.
- (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 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 (AUG 2021)

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 and goals 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 (AUG 2021)

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 (See 2 CFR Part 200.203 and Appendix I to

2 CFR Part 200). The DOE FOA 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 the DOE funding opportunity.

STRIPES use for FOAs is encouraged but not mandatory. Users can create a FOA in STRIPES to get access to the FOA templates or Users can create a FOA in online programmatic application portals developed systems. GOs and TPOS/Project Managers can 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.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 grant and cooperative agreement FOAs and modifications to the announcements are posted to the Grants.gov if using other online programmatic application portals. If DOE's STRIPES system is the released method for the FOA and modifications of the announcement the GO should select the Grants.gov and FedConnect for transmission.

The synopsis must have a link to FedConnect if FOA and FOA modifications release method is STRIPES for access to the full announcement. If using an online Programmatic Application Portal, the synopsis in Grants.gov must include the online Programmatic Application Portal being used for access to the full announcement.

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

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 FOA should indicate whether or not

pre-applications are required. If pre-applications are required, the FOA 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 (AUG 2021)

Letters of Intent (LOI) are a useful tool for obtaining applicant submittal information used by the GO and Program Office for setting up the merit review process. If a LOI is required, the FOA must clearly state that it is a mandatory requirement, provide a due date, and describe what is to be included in the LOI. Any requirement regarding the submittal of a LOI and applicant eligibility for Full-Application submittal must also be clearly stated.

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 Full-Applications (New or Renewal) (AUG 2021)

A full-application or 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 DOE funding opportunity or program announcement (FOA). An application is required for all financial assistance projects or programs funded by DOE. At a minimum, 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 as required by the FOA, 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 information required for a new or renewal application package must be stated and included in the FOA and/or award. The FOA and award must also include instructions on where and how to submit the appropriate application.

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 (FOA). 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 FOA.

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 Cochrans Mill Road
Pittsburgh, PA 15236-0940

E-mail:

DOEUSP@NETL.DOE.GOV

2.4 Evaluation and Selection

2.4.1 Initial Screening of Letters of Intent (AUG 2021)

Upon receipt of Letters of Intent, the GO should meet with Legal Counsel and Merit Review Board to discuss any questions, potential conflicts of interest, and other legal issues. The GO should perform an initial review to determine that:

- (A) the applicant provides basic information about their organization and application;
- (B) the information and documentation required for the Letter of Intent has been submitted;
- (C) all mandatory submittal and eligibility requirements are satisfied; and
- (D) the recipient completed all required information by the deadline stated in the FOA.

Letters of Intent that are noncompliant should not be reviewed or considered. The GO shall send a notification letter to the applicant to inform why the Letter of Intent was deemed noncompliant. The GO should send the notification letter soon after the Letter of Intent was deemed noncompliant, but the GO may at his/her discretion, send it at a different time.

If all mandatory submittal and eligibility requirements are satisfied recipient shall submit full application in STRIPES/or Programmatic Portal by FOA deadline; and

2.4.2 Initial Screening of Concept Papers (SEPT 2023)

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

- (A) each reviewer assigned has provided a signed Conflict-of-Interest Certificate/Non-Disclosure Agreement in accordance with Funding Opportunity Announcement (FOA) and the Merit Review Plan (MRP), to the GO or Programmatic Portal if applicable;
- (B) the information and documentation required by the FOA has been reviewed for compliance and responsiveness;
- (C) all mandatory submittal and eligibility requirements are satisfied and encourage or discourage; and
- (D) the proposed project is encouraged to submit a full application.

Concept papers found non-compliant/non-responsive in accordance with the FOA should not be further reviewed or evaluated and applicant should be informed of the reason for the concept paper not being evaluated. The GO should send the notification letter soon after the Concept Paper was deemed noncompliant, but the GO may at his/her discretion, send it at a different time.

2.4.3 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.

2.4.4 Merit and Risk Reviews

(A) *Merit Review*

It is DOE policy that all discretionary financial assistance, competitive or noncompetitive, be 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 200.206, prior to making an award, DOE must review any information available in OMB-designated repositories of Government-wide eligibility qualification or Federal Awardee Performance and Integrity Information System for All financial assistance recipients. 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 in the FOA. Pre/Post award risk evaluation adjustments can be applied if merited.

2.4.5 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 must be specified in the FOA or program rule to notify applicants that such factors will affect the selection process. A written justification of the application of the Program Policy Factors must be prepared by the selection official or designated reviewer and must be included in the Selection Statement.

2.4.6 Selection

The Selection Official reviews the Merit Review Summary Statements and Ranking Sheet, applies the Program Policy Factors (if applicable), and prepares a narrative statement to document the selection of applications to be considered for negotiation of an award . 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 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 applicants 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 be performed 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/or 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 (domestic or foreign) 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 200.327? (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 Subsection 2.5.4 for information on high risk recipients.

2.5.3 Determination of Responsibility (AUG 2021)

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.

Federal Civil Rights Statutes to Recipients of DOE Financial Assistance:

Recipients of DOE Federal Financial Assistance (FFA) are subject to Federal civil rights statutes¹ that prohibit FFA recipients from excluding persons from participation in,

¹ See Section 1.7 of this Guide for a description of the Federal civil rights statutes, including: Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. §§ 2000d *et seq.*, Section 16 of the Federal Energy Administration Act of 1974, as amended (Section 16), Pub. L. 93-275; Section 401 of the Energy Reorganization Act of 1974 (Section 401), Pub. L. 93-438, Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. §§ 1681 *et seq.*, Section 504 of

denying persons the benefits of, or otherwise subjecting persons to discrimination under any program or activity that receives DOE Federal financial assistance because of their race, sex,² color, disability, age, or national origin. The Department has promulgated regulations at 10 C.F.R. Part 1040 and 10 C.F.R. Part 1042 to implement these Federal civil rights statutes.

The Office of Economic Impact and Diversity, Office of Civil Rights and Diversity is responsible for administering DOE regulations and policies related to compliance with Federal civil rights statutes by DOE FFA recipients. The Office of Civil Rights and Diversity carries out its work by monitoring and enforcing compliance with Federal civil rights statutes and DOE implementing regulations, investigating complaints filed with the Department against DOE FFA recipients, conducting compliance reviews of DOE FFA recipients, and providing technical assistance to DOE FFA recipients.

DOE's civil rights implementing regulations outline ongoing responsibilities for DOE FFA recipients, identify broad self-assessment and reporting requirements that DOE FFA recipients are subject to, and provide the means for pre-award review and clearance.

The section below describes the various Federal civil rights statutes in more detail, as well the process to be followed if a DOE FFA recipient is found to be out of compliance with any Federal civil rights laws enforced by DOE's Office of Civil Rights and Diversity.

Additional information can also be found at: <https://www.energy.gov/diversity/civil-rights>.

Civil Rights Statutes Enforced by the DOE Office of Civil Rights and Diversity:

- (A) Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. §§ 2000d *et seq.*, and DOE Title VI implementing regulations at 10 C.F.R. Part 1040, Subpart B, prohibit DOE FFA recipients from engaging in discrimination based on race, color, or national origin under any program or activity receiving DOE Federal financial assistance. DOE's Title VI implementing regulations at 10 C.F.R. Part 1040, Subpart B, also incorporate Section 16 of the Federal Energy Administration Act of 1974, as amended (Section 16), Pub. L. 93-275 and Section 401 of the Energy Reorganization Act of 1974 (Section 401), Pub. L. 93-438, which prohibit discrimination based on sex under any program or activity receiving DOE Federal financial assistance that is subject to Section 16 or Section 401. Additionally, a DOE FFA recipient may not discriminate in employment on the grounds of race, color, national origin, or sex (if covered by Section 16 or Section 401) whenever (1) the primary objective of the DOE Federal financial assistance is employment, or (2) the FFA recipient's employment practices tend to exclude persons from participation in, deny them the benefits of, or subject them to discrimination under the program receiving DOE Federal financial assistance. In the latter case, DOE Title VI implementing regulations apply to the extent necessary to assure equality of opportunity to and nondiscriminatory treatment of

the Rehabilitation Act of 1973 (Section 504), as amended, 29 U.S.C. § 794, and Age Discrimination Act of 1975, as amended, 42 U.S.C. §§ 6101 *et seq.*

² The prohibition of sex discrimination applies to any program or activity that receives DOE Federal financial assistance that is subject to Section 16 or Section 401, and to any education program or activity that receives DOE Federal financial assistance.

beneficiaries.

- (B) Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. §§ 1681 *et seq.*, and DOE Title IX implementing regulations at 10 C.F.R. Part 1042, prohibit recipients of DOE Federal financial assistance from engaging in discrimination based on sex under any academic, extracurricular, research, occupational training, or other education program or activity receiving DOE Federal financial assistance. The Title IX regulations further prohibit discrimination in employment based on sex. Thus, DOE FFA recipients must make all employment decisions in any education program or activity receiving DOE Federal financial assistance in a nondiscriminatory manner and must not limit, segregate, or classify applicants or employees in any way that could adversely affect any applicant's or employee's employment opportunities or status because of sex. A DOE FFA recipient also must not enter into any contractual or other relationship which directly or indirectly has the effect of subjecting employees or students to prohibited sex discrimination, including through relationships with employment and referral agencies, labor unions, and organizations providing or administering fringe benefits to DOE FFA recipient employees.
- (C) Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 29 U.S.C. § 794, and DOE Section 504 implementing regulations at 10 C.F.R. Part 1040, Subpart D, prohibit discrimination based on disability in any program or activity receiving DOE Federal financial assistance. The DOE Section 504 implementing regulations also prohibit discrimination in employment based on disability, and hence, DOE FFA recipients may not limit, segregate, or classify applicants or employees in any way that adversely affects their opportunities or status because of disability. DOE FFA recipients also may not participate in a contractual or other relationship that has the effect of subjecting qualified disabled applicants or employees to discrimination, including through relationships with employment and referral agencies, labor unions, or organizations providing or administering fringe benefits, training, or apprenticeships. DOE FFA recipients must also make reasonable accommodation to the known physical or mental limitations of an otherwise qualified disabled applicant or employee, unless the DOE FFA recipient can demonstrate that the accommodation would impose an undue hardship on the operation of its program or activity.
- (D) Age Discrimination Act of 1975, as amended, 42 U.S.C. §§ 6101 *et seq.*, and DOE's corresponding implementing regulations at 10 C.F.R. Part 1040, Subpart E, prohibit discrimination based on age in any program or activity receiving DOE Federal financial assistance. However, federally assisted programs or activities and recipients of DOE Federal funds may continue to use age distinctions and factors other than age which meet the requirements of the Age Discrimination Act and DOE's corresponding implementing regulations.

DOE Enforcement Efforts Following a Determination of Noncompliance with Federal Civil Rights Statutes:

The measures available to the Department to enforce Federal civil rights statutes, which prohibit DOE FFA recipients from discriminating based on race, color, national origin, sex, disability, or age, are set out in DOE's implementing regulations at 10 C.F.R. Part 1040, Subparts G and H.

(A) Means Available

Pursuant to 10 C.F.R. § 1040.111, if there appears to be a failure or threatened failure by a recipient to comply with any Federal civil rights statute or DOE implementing regulation, and the noncompliance or threatened noncompliance cannot be corrected by voluntary means, compliance may be effected by the suspension, termination of, or refusal to grant or to continue Federal financial assistance, or by any other means authorized by law. Other means may include but are not limited to: referral to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights under such laws or other statutes which apply, or any assurance or other contractual undertaking; and any applicable proceeding under State or local law.

(B) Noncompliance with Assurances

Pursuant to 10 C.F.R. § 1040.112, if an applicant fails or refuses to furnish the required non-discrimination assurance, or otherwise fails or refuses to comply with a non-discrimination requirement, action to refuse DOE Federal financial assistance will be taken in accordance with the procedures of 10 C.F.R. § 1040.114.

(C) Termination of or Refusal to Grant or Continue Federal Financial Assistance

Under 10 C.F.R. § 1040.114, no order suspending, terminating, or refusing to grant or continue DOE Federal financial assistance is to become effective until: the ED Director provides notice of the proposed order to the Executive Assistant to the Secretary of Energy, if the action is contemplated against a State or local government; the ED Director has advised the applicant or recipient of their failure to comply and has determined that compliance cannot be secured by voluntary means; there has been an express finding on the record of a failure by the applicant or recipient to comply after opportunity for a hearing; the Federal Energy Regulatory Commission has notified the Secretary of its finding of noncompliance; and thirty days has expired since the Secretary, or designee, has filed a full written report of the grounds for action with the U.S. House of Representatives and Senate committees having legislative jurisdiction over the program involved. Any action to suspend, terminate, or refuse to grant or continue DOE Federal financial assistance is to be limited to the political entity or part of that entity or other applicant or recipient to whom the finding has been made and shall be limited in its effect to the program or part of the program in which the noncompliance has been found.

(D) Other Means Authorized by Law

Under 10 C.F.R. § 1040.115, no action to effect compliance by any other means authorized by law is to be taken until the ED Director has determined that compliance cannot be secured by voluntary means; the recipient has been notified in writing that it has been found in formal noncompliance and that it has ten days before formal enforcement proceedings begin in which to enter into a written voluntary compliance agreement; and at least ten days from the mailing of the written notice to the recipient has expired.

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 200.206. 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 specific 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 (AUG 2021)

Payment may be made by either an advance or cost reimbursement. The determination of the payment method is dependent upon the results of the financial management assessment.

- (A) *Advance Payment.* 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.
- (B) *Cost Reimbursement.* As specified in 2 CFR Part 910.354, cost reimbursement is the preferred method of payment for For-Profit organizations. Reimbursement is also used for Recipients of awards that are subject to Specific Conditions per 2 CFR 200.208 or if a Recipient request payment by reimbursement. If the awarding Office chooses the reimbursement method, payment must be made within 30 calendar days after receipt of billing, unless the awarding/programmatic office deems the request to be improper.

2.5.6 Cost Sharing (SEPT 2020)

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

(B) GO Responsibilities

(1) *FOAs and Award Agreements:*

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

GOs must 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 EPAct 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 EPOA 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 must 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 subsection, National Laboratories (Labs) are those defined by Section 2 of EPOA 05 as any of the following DOE 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 or project. 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 (1) a written determination that no conflicts exist or (2) a written determination identifying the conflicts and how the 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 (DOE O 412.1).

(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

An award to a DOE Lab made under a FOA is made against their existing prime contract with the Department through the Work Authorization System as outlined in the DOE 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 to the Lab. 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 participate 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

Energy Policy Act of 1992 (EPAAct 1992). Section 2306 of EPAAct 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 EPAAct 2005, which established a new set of Departmental priorities. In establishing these new priorities, EPAAct 2005 did not include a specific sunset provision for EPAAct 1992, nor did it include a similar eligibility requirement except for certain specific programs. In fact, Section 1005 of EPAAct 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 EPAAct 1992. Therefore, the eligibility requirements of EPAAct 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 FOA 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 FOAs. 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 200.1 and 2 CFR Part 200.201(b), Fixed Amount Awards, DOE GOs may make grants awards on a fixed amount basis for awards that do not require Federal monitoring or reviewing of actual costs incurred or mandatory cost share. 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 specific award 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 (AUG 2021)

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 200.1, 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. Non Federal Entities Program Income earned from intellectual property are not accountable to the federal awarding agency.

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

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 (AUG 2021)

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, updated 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 (UEI) 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 UEI 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 (MAR 2024)

(A) SAM and Unique Entity Identifier Requirements

Sub-awardees are required to obtain a UEI; however, do not need to be registered in SAM. GSA has implemented a process by which an organization that will only be a subawardee may receive a UEI without undergoing a complete SAM registration. See SAM.gov website

for additional information about registration and UEI assignment.

(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 (FCOI) 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 FCOI:

- The Prime Recipient must have a written and enforced administrative process to identify and manage the 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 FCOI reporting requirements.

Subrecipients who rely on their FCOI 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 FCOI 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 (MAR 2024)

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. For step by step guidance see the “Advanced Notification of Award (ANA) User Guide”:

https://powerpedia.energy.gov/wiki/File:Advanced_Notification_of_Award_system_user_guide.pdf

Users must have an active iPortal account in order to access ANA:

<https://iportal.doe.gov/ana>. If users do not currently have an iPortal account or need to request ANA access please contact the CBS Help Desk at CBSHelpDesk@hq.doe.gov.

For all other inquiries please contact CI-ANA@hq.doe.gov.

2.7 D2 DAIMS / FFATA / USASpending.gov (AUG 2021)

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 Assistance Listing chapter of this guide for further details on domestic assistance programs (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.

USASpending.gov descriptions for use in STRIPES must have a non-technical, detailed and accurate award/project description that includes specificity about the:

- (1) purpose,
- (2) planned activities/objectives (including activities of subrecipients if known),
- (3) expected deliverables and/or outcomes, and
- (4) intended beneficiary(ies) of the funded award/project.

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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 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 (AUG 2021)

Pre-award costs are those incurred up to 90 days 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. Pre-award costs must be charged to the initial budget period of the award unless otherwise approved by DOE GO or pass through-entity.

As specified in 2 CFR Part 200.308, all costs incurred before DOE makes the award are at the non-Federal entity's risk (i.e., DOE is under no obligation to reimburse such costs for if for any reason the applicant 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 non-Federal entity'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 must 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/ Budget Period/ and Project Period (AUG 2021)

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 and must obtain approval of HCA/SPE or Renewal Award periods greater than 6 years or more.

3.3.2 Budget Period

The budget period is the interval(s) of time, specified in the financial assistance award, into which the current 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.

Budget Period (BP) equals the Period or Performance usually divided by 12 month increments but BP can be shorter or longer.

3.3.3 Project Period

The project period is the interval of time that identifies the date on which the initial award was made and includes the ultimate end date of award at closeout or termination. The Project Period can identify just the initial Period of Performance or, in the case of an award that has been modified to include a Renewal, consecutive Periods of Performance.

Project Period equals the initial period of performance plus all renewal award periods.

3.4 Post-award Orientation

A post-award orientation is a letter or meeting between DOE and the Prime Recipient to communicate 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.

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CHAPTER 4 – ADMINISTRATION (SEPT 2023)

4.1 Monitoring Project Performance

4.1.1 Termination (AUG 2021)

- (i) An award may be terminated in whole or in part in any of the following situations by:
 - (a) DOE when the recipient fails to comply with the terms and conditions of the award;
 - (b) DOE when the DOE has cause;
 - (c) mutual agreement of DOE and the recipient; or
 - (d) the recipient by providing written notice to DOE setting forth the reasons for the termination, the effective date, and, in the case of partial termination, the portion of the project to be terminated with the understanding that DOE may terminate the entire award if DOE determines that the unterminated portion will not accomplish the purposes of the award.
- (ii) Normally, action by DOE to terminate an award will be taken only after the recipient has been informed by DOE of the proposed action or informed of any deficiency on its part and given an opportunity to correct it. DOE, however, may immediately terminate an award without notice when it believes such action is reasonable to protect the interests of the Government.
- (iii) No costs incurred during a suspension period or after the effective date of a termination will be allowable, except those costs which, in the opinion of DOE, the recipient could not reasonably avoid or eliminate, or which were otherwise authorized by the suspension or termination notice, provided such costs would otherwise be allowable under the terms of the grant and the governing cost principles.
- (iv) Within 30 days of the termination date the applicant will furnish a summary of progress under the grant and an itemized accounting of costs incurred prior to the termination date or pursuant to (iii) above. Final allowable costs under a termination settlement shall be in accordance with the terms of the grant, including this section, and the governing cost principles, giving due consideration to the progress under the grant. In no event will the total of DOE payments under a terminated grant exceed the grant/cooperative agreement amount or the DOE pro rata share when cost sharing was anticipated, whichever is less.
- (v) If DOE terminates an award due to material failure of a federal award terms and conditions, the Grants Officer/ shall ensure the applicant's termination has been reported to the OMB-designated integrity and performance system accessible through SAM (currently FAPIIS) in accordance with 2CFR 200.340.

4.1.2 Federal (DOE) Responsibilities

It is DOE policy to limit involvement between itself and the recipient in the performance of an award/ project to the minimum necessary to achieve program/award 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 greatest extent possible, DOE GOs, Program/Project Managers, and Technical Project Officers should rely on the management systems of the financial assistance recipients to monitor their progress meeting project objectives, compliance with award terms and conditions, and management of award funds.

4.1.3 Recipient Responsibilities

A recipient has full responsibility for the conduct of the project or activity supported and for the results achieved under their award. 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 and the terms and conditions of the award agreement. The recipient is responsible for monitoring the activities and performance of, and the pass-through requirements to, any and all subrecipients including FFRDCs and National Labs.

4.1.4 Subrecipient Monitoring

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/award/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 a 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.

4.1.5 Lobbying

GOs should monitor recipient performance to ensure inappropriate activities are not conducted and lobbying costs are not incurred under an award. 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 activities or lobbying. Special audits are performed at the request of the GO and are in addition to the recipient's requirement to arrange for an annual indirect cost, single, compliance, or program-specific audit.

4.2 Award Amendments (SEPT 2023)

4.2.1 Project Scope and Budget Revisions

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

- (A) Change in the approved scope or the objectives of the award, 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 DOE 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(PI);
- (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 200.1 *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 identified in the award that must be provided by the recipient; and/or
- (H) The need 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 and budget revisions.

All revisions to award project scopes and/or budgets will result in a modification to the award. See also, Supplemental Award, Continuation Award, and Renewal Award.

Project revisions to awards from a competitive announcement must remain within the programmatic boundaries of the announcement and must 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 (DNFA) if the changes would not be acceptable under the original FOA.

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

4.2.2 Period of Performance Revisions and Extensions

The end date of the project period of performance may be changed as a result of a recipient initiated One-Time Extension (see 4.2.3 below), a no-cost extension to the award approved by DOE, or, if applicable, by execution of a Renewal or Supplemental Award modification by DOE (see Renewal Award and Supplemental Award below).

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:

- Neither provides or approves any additional funds or award funding;
- Neither provides or approves any additional project objectives, scope or work;
- require the recipient to have all previously approved work from the original project objectives or scope completed within the previously approved awarded budget;
- may not be exercised merely for the purpose of using unexpended award funds;
- cannot be granted for awards that contain a zero balance;
- per regulation, cannot be exercised on SBIR and STTR awards;
- must be executed by the GO in a modification to the award with the new end date of the Period of Performance (project period).

To request or initiate 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 the extension is prohibited by the terms and conditions of the award;
- If the extension requires a change to the approved budget or 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

Carryover is the process by which unobligated funds remain at the end of a budget period and may be carried forward to cover allowable and allocable costs in the next budget period. Unobligated funds remaining at the end of any budget period that may, with the approval of the sponsored program office official and the GO, be carried forward to the next budget period to cover allowable and allocable 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.

4.2.5 Continuation (Award Continuation Amendment) (SEPT 2023)

A Continuation is a modification to an award for a succeeding or subsequent budget period after the completion of a budget period within an approved period of performance. The continuation modification authorizes the expenditure of funds for the project to be performed during the new budget period. The GO must modify the award with an award continuation modification to incorporate the new budget period into the award and, if necessary, to provide the funding for the new budget period.

Continuation modification and 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 award.

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.

4.2.6 Supplemental Award (Supplemental Award Amendment) (SEPT 2023)

A Supplemental Award provides additional project objectives or scope and/or increases the project budget of an existing award. Supplemental award modifications do not add budget periods or extend the period of performance of an expiring award.

4.2.7 Renewal Awards (Award Renewal Amendment) (SEPT 2023)

A Renewal Award adds one or more budget periods and extends the period of performance of an expiring award. Renewal awards made to an expiring award resulting from a competitive announcement must remain within the programmatic boundaries of the announcement and must be considered meritorious under the merit review criteria of the announcement. If the Renewal application contains substantial changes to the expiring project's scope or objectives, or if the changes would not be acceptable under the original

FOA, the program office in consultation with the GO must provide a determination of non-competitive financial assistance (DNFA) to execute the Renewal award modification.

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 of performance unless a program rule or other document establishes a different application deadline. The same process for making an initial/new 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. The GO must modify the award with an award renewal modification to: incorporate the renewal project scope, budget and budget period(s), and reporting requirements into the award; extend the period of performance to cover the renewal period; provide the funding for the new budget period; and, if necessary, update the terms and conditions of the award.

Renewal award modification and 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.

(A) Discretionary Renewal

Discretionary renewal awards may be made on the basis of an announcement or on a noncompetitive basis when the project was previously reviewed for merit and justified in accordance with 2 CFR Part 910.126 *Competition* and there are no substantial changes to the expiring project's scope or objectives. If the noncompetitive renewal application contains substantial changes, the GO must provide a determination of non-competitive financial assistance (DNFA) to execute the Renewal award modification.

(B) Formula Renewal

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.

4.2.8 Name Change/Novation (SEPT 2023)

DOE's Federal financial assistance awards (Award) are not assignable without the prior written consent of the GO. The GO may, when it determines it is consistent with the Government's interest, recognize a third party(Proposed Recipient) as the successor in interest to an Award. Requests for a Name Change/Novation of an Award to Proposed Recipient arise under a variety of circumstances. As a result, a GO can make award-specific Name Change/Novation determinations so that the unique circumstances of each Proposed Recipient may be considered. A Name Change/Novation shall be appropriately made and adequately documented.

There are cases where a PI transfers from one individual/business/organization (entity) to another. The Award can be transferred from one entity to another; however, the current Recipient

(Recipient) of the project and the Proposed Recipient must agree. DOE can facilitate a transfer of the Award and the assignment of the remaining of unobligated funds to the Proposed Recipient. This should be done as a bilateral amendment to the Award, or subject to DOE's consent the Recipient can initiate a subaward to the PI's new entity. The Recipient can also propose a new PI or request that the Award be terminated and closed out.

The Recipient shall notify the TPO and GO in writing within at least 30 calendar days in advance of the proposed effective date of the change. If the Award is to transfer to the Proposed Recipient, the Recipient shall work with both the TPO and GO to determine whether a Name Change/Novation is in the best interest of the Government. The GO shall get the concurrence of both the TPO and the assigned cognizant Program Office legal counsel before executing a Name Change/Novation.

(A) Name Change

A name change may be appropriate in a situation in which the Recipient institutes a legally recognized and properly effected change in its legal name that does not involve the transfer of assets, liabilities, or key employees to a third party. In such a situation, the GO has the discretion to initiate an award amendment for a name change with concurrence from the cognizant Program Office legal counsel. In consideration a name change, the GO is to determine whether there is any substantive change that would negatively affect the recipient's ability to perform the award.

The GO shall collect information from the Recipient about the Proposed Recipient's name change to the Award. At a minimum, the GO shall request the following:

- Brief summary of progress to date;
- Description of Scope of work yet to be accomplished;
- SF-424A, excel spreadsheet or other format at the discretion of the GO that includes total disbursements and unpaid obligations to date;
- Documentation effecting the name change, authenticated by proper official having requisite jurisdiction;
- Proposed Recipient name, UEI Number, TIN and legal documentation to the GO; and
- Updated SF-424A to reflect the scope of work that will be done with the Proposed Recipient.

If the GO determines that recipient's name change request should be approved, the GO will process the Recipient's name change through Award amendment in STRIPES.

(B) Novation

The GO has the discretion to consent to a novation request when the novation is in the Government's interest, conforms with all applicable laws, and third party's interest in the agreement arises out of the transfer of (1) all the recipient's assets; or (2) the entire portion of the assets necessary to perform the project described in the agreement.

Consistent with § 910.370(b), if the GO determines a novation is not in the Government's interest, the original recipient remains subject to the terms of the financial assistance agreement, and DOE may exercise all legally available remedies under [2 CFR 200.339](#) through [200.343](#), or those that may be otherwise available, should the original recipient not perform.

Consistent with § 910.370(c), the GO may require submission of any documentation in support of a request for novation, including the documentation identified in [48 CFR Subpart 42.12](#) and may use the format in 48 CFR 42.1204 as guidance for preparation of an acceptable novation agreement.

In determining whether the novation is consistent with the Government's interest, the GO should consult with the TPO and cognizant Program Office legal counsel. At the CO's discretion and based upon the facts, the GO may choose to consider the following types of information:

- (a) The Proposed recipient's level of responsibility and whether the Proposed Recipient:
 - Has adequate financial resources to perform the Award and meet any remaining cost share requirements, or the ability to obtain them;
 - Is able to comply with the statement of project objectives to the same or better extent than the Recipient of the Award;
 - Has a satisfactory record of integrity, business, and performance;
 - Has the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them in a timely manner to carry out the award;
 - Has the necessary production, intellectual property, construction, technical equipment and facilities, and key employees, or the ability to obtain them; and
 - Is otherwise qualified and eligible to receive an award under the terms of the original FOA/Award and other applicable laws and regulations (e.g., not foreign owned and meets other eligibility criteria described in the FOA or Award Agreement);
- (b) Any factor relating to the Proposed Recipient's performance of Awards that would impair the Proposed Recipient's ability to perform satisfactorily;
- (c) Search results from the Federal database (SAM.gov) to determine whether the Proposed Recipient is in good standing and eligible to receive Awards (i.e., not debarred);
- (d) Review documentation regarding the Proposed Recipient that typically is required when making a new Award (e.g., DUNS Report; SAM inquiry, Scope of work yet to be accomplished, SF-424A, excel spreadsheet or other format at the discretion of the GO that includes total disbursements and unpaid obligations to date.);
- (e) Evidence of the Proposed Recipient's capability to perform (e.g., technical capabilities, cost share resources or financial documents);
- (f) The instrument(s) effecting the transfer of Recipient and Proposed Recipient's assets, if any (e.g., assignment and assumption agreement, purchase/sale agreement, certificate of merger, contract, deed, agreement, or court decree);
- (g) The written opinion of an attorney for the Recipient and Proposed Recipient stating that: (a) the transfer of the award and the novation agreement was properly effected under applicable law;

- (b) the respective authorized representatives had authority to enter into the novation agreement on behalf of the Proposed Recipient and the Recipient; and (c) the effective date of the transfer;
- (h) If the award will have to be terminated or discontinued;
- (i) If the novation is not approved, the GO may also consider (1) the current status of the Award and (2) the cost-benefit of novating the Award to a new entity rather than terminating or otherwise discontinuing the Award; and
- (j) If in consultation with the cognizant Program legal; counsel the GO determines the novation will result in a material change to the Award scope; a DNFA is required. See guide subsection 2.1.3 Competition for more information.

If the GO determines that Recipient's novation request should be approved, the GO will process the novation through Award amendment in STRIPES.

4.3 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 200.208 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 Recipient 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 200.339 *Remedies for noncompliance*. 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.

4.4 Indirect Cost (AUG 2021)

(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 unless a different rate is required by statute or regulation and, if allowable, should be displayed on a public website by the cognizant agency.

Indirect cost reimbursement on grants and cooperative agreements awarded under programs with statutory or regulatory prohibitions or limitations against the reimbursement of indirect costs shall be made in accordance with the statutory or regulatory 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 budget 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 for each budget period. If during the project budget 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 or 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.

(D) Any non-Federal entity that does not have a current negotiated (including provisional) rate, except for those non-Federal entities described in 2 CFR 200 Appendix VII, paragraph D.1.b, may elect to charge a de minimis rate of 10% of modified total direct costs (MTDC) which may be used indefinitely. No documentation is required to justify the 10% de minimis indirect cost rate. **However, if a Recipient considers the use of the indirect costs resulting from the use of the de minimis rate as the Recipients cost share requirement, the Recipient must provide**

documentation for verification as stated in §200.306 *Cost sharing or matching.*

As described in §200.403, costs must be consistently charged as either indirect or direct costs but may not be double charged or inconsistently charged as both. If chosen, this methodology once elected must be used consistently for all Federal awards until such time as the non-Federal entity chooses to negotiate for a rate, which the non-Federal entity may apply to do at any time.

(E) The federally negotiated indirect rate, distribution base, and rate type for a non-Federal entity (except for the Indian tribes or tribal organizations, as defined in the Indian Self Determination, Education and Assistance Act, 25 U.S.C. 450b(1)) must be available publicly on an OMB-designated Federal website.

4.5 Property (AUG 2021)

4.5.1 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 200.1, means land, including land improvements, structures and appurtenances thereto, but excludes movable machinery and equipment.

(B) *Personal Property*, as defined in 2 CFR Part 200.1, 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 200.1, 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 200.1, means all tangible personal property other than those described in § 200.1 *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 § 200.1 *Computing devices and Equipment*.

(2) *Intangible property*, as defined by 2 CFR Part 200.1, 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 Subsection 2.5.9.

4.5.2 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.

4.5.3 Real Property

Subject to the conditions set forth in 2 CFR 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 pertaining to real property acquired or improved under a Federal award for For-Profit recipients.

4.5.4 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 authority to dispose of the property by other methods. The DOE must issue appropriate disposition 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.

4.5.5 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 §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 200.313(d).

Disposition requirements are contained in 2 CFR 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 pertaining to equipment acquired under a Federal award for For-Profit recipients.

4.5.6. Domestic Preferences for Procurements (AUG 2021)

DOE GOs and CO should encourage all Federal award recipients to the extent permitted by law to maximize use of goods, products materials to be produced in the United States when procuring goods and services under Federal awards.

4.5.7 Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment (AUG 2021)

As required by 2 CFR 200.216, DOE recipients and subrecipients, including borrowers under DOE funded loan programs, are prohibited from obligating or expending loan or grant funds to procure or obtain, extend or renew a contract to procure or obtain, or enter, into a contract (or extend or renew a contract) to procure of obtain equipment services, or services that use covered telecommunications equipment or essential component if any system as a critical technology as part of any system. As described in Public Law 1523, section 889 covered communications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

Recipients, subrecipients, and borrowers also may not use DOE funds to purchase consistent with 2 CFR 200.471, telecommunications and video surveillance services or equipment such as phones, internet video surveillance and cloud servers are allowable except for following circumstances:

Obligating or expending DOE funds for covered telecommunications and video surveillance services or equipment or services as described in 2 CFR 200.216 to:

- (1) Procure or obtain, extend or renew a contract to procure or obtain;
- (2) Enter into a contract (or extend or renew a contract) to procure; or

(3) Obtain the equipment, services or systems.

Certain prohibited equipment, systems or services, including equipment, systems or services produced or provided by entities identified in section 889, are recorded in the System for Award Management exclusion list.

4.5.7 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.

4.5.8 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.

4.5.9 Property Trust Relationship

Real property, equipment, and intangible property, which 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.

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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 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 is \$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. 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
	<ul style="list-style-type: none"> • <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)
	<ul style="list-style-type: none"> • <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)
	<ul style="list-style-type: none"> • <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)
	<ul style="list-style-type: none"> • <u>Compliance</u> - report on compliance for each major program and a report on internal control over compliance. 	2 CFR 200.515(c)
	<ul style="list-style-type: none"> • 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 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 Audit Resolution (OFPAR). The OFPAR Audit Resolution Team (ART) 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 ART 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 and utilizing DARTS for official tracking and disposition of audit findings. Procedures and guidance on DARTS is issued by OFPAR.

(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, 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 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 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 Compliance 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 Compliance 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
	<ul style="list-style-type: none"> 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)
	<ul style="list-style-type: none"> <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)
	<ul style="list-style-type: none"> <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)
	<ul style="list-style-type: none"> <u>Compliance</u> - report on compliance for each major program and a report on internal control over compliance 	2 CFR 910.515(c)
	<ul style="list-style-type: none"> 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 program 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 program 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 program 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 Audit Resolution (OFPAR). The OFPAR 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. 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 For-Profit Audits from DARTS or the cognizant program/contracting office and reporting audit resolution status to the OFPAR 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 and utilizing DARTS for official tracking and disposition of audit findings. Procedures and guidance on DARTS is issued by OFPAR.

(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, 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.

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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 (AUG 2021)

6.1.1 Non-Compliance. 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.

6.1.2 Notice of Non-Compliance. When a review of the recipient's performance reveals an apparent failure to comply with the terms and conditions of the award, the non-compliance issue(s) must immediately be addressed with the recipient. The GO must request the recipient to provide a written explanation and a correction action plan or remedy for the specific non-compliance issue(s). If the recipient does not provide a satisfactory explanation and a specific correction plan or remedy, the GO will then provide to the recipient a written Notice of Non-compliance that includes corrective actions that must be taken by the Recipient.

The Notice of Non-Compliance (Notice) at a minimum must contain:

- (1) The factual and legal bases for the determination of non-compliance (the specific terms and conditions with which the recipient has failed to comply);
- (2) The specific 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 of Non-compliance or does not provide satisfactory assurances that actions have been initiated that will achieve compliance in a timely manner.

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

6.1.3 Additional Actions. The GO may initiate any of the remedies in 6.2 concurrently with the 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; or
- (3) if there is mismanagement or misuse of award funds necessitating immediate action.

6.2 Remedies for Non-Compliance (AUG 2021)

6.2.1 Additional Specific Award Conditions. In accordance with 2 CFR 200.339, 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 §200.208 *Specific conditions*, as appropriate for the circumstances. In addition to the additional specific award conditions in §200.208, DOE or the pass-through entity may take one or more of the actions listed in paragraph 6.2.3 below.

The additional specific award conditions in §200.208 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.

6.2.2 Notice of Specific Award Requirements. 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 200.339, *Remedies for non-compliance*, 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.

6.2.3 Remedies for Non-Compliance. 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 (AUG 2021)

6.3.1 Notice of Suspension or Termination

In accordance with 2 CFR 200.339 - 200.343, 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 (Notice or Notification) should be sent **at least ten calendar 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 U.S. Constitution, 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. The Notification of Termination must also state:
 - (A) The termination decision will be reported to the OMB-designated integrity and performance system accessible through SAM (currently FAPIIS);
 - (B) The information will be available in the OMB-designated integrity and performance system for a period of five years from the date of the termination, then archived;
 - (C) Federal awarding agencies that consider making a Federal award to the non-Federal entity during that five-year period must consider that information in judging whether the non-Federal entity is qualified to receive the Federal award, when the Federal share of the Federal award is expected to exceed the simplified acquisition threshold over the period of performance;
 - (D) The non-Federal entity may comment on any information the OMB-designated integrity and performance system contains about the non-Federal entity for future consideration by Federal awarding agencies. The non-Federal entity may submit comments to the awardee integrity and performance portal accessible through SAM (currently CPARS).

(E) Federal awarding agencies will consider non-Federal entity comments when determining whether the non-Federal entity is qualified for a future Federal award.

(8) A statement of the recipient's right to appeal a termination for failure to comply with the terms and conditions of the award; and

(9) The signature of the DOE GO and date signed.

6.3.2 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 performance on the 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.

6.3.3 Termination.

The DOE award may be terminated in whole or in part as follows:

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

(2) By DOE or the pass-through entity, to the greatest extent authorized by law, if an award no longer effectuates the program goals or DOE priorities;

(3) By DOE or the pass-through entity with the consent of the recipient, 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;

(4) By the recipient upon sending to DOE or the pass-through entity written notification setting forth the reasons for such termination, the effective date of the

termination, and, in the case of partial termination, the portion of the Federal award to be terminated (to include an appropriate scope and budget revision request). 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; or

(5) By the Federal awarding agency or pass-through entity pursuant to termination terms and conditions included in the Federal award.

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 U.S. Constitution, 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 Debarment and Suspension 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.

6.3.4 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.

6.3.5 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 Appels

6.4.1 Disputes.

DOE or the pass-through entity will provide the Recipient an opportunity to respond and provide information and documentation challenging the suspension or termination action, in accordance with written processes and procedures in 2 CFR 910.128.

Non-Federal entities should promptly notify the GO in writing of any disputes arising from the administration of their DOE award. Whenever there is a dispute, both the Recipient 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.

6.4.2 Right of Appeal.

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 may be entitled to under any statute or regulation applicable to the action involved. 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 and Project 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 200.340 (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 laws, 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.

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CHAPTER 7 – CLOSEOUT (AUG 2021)

7.1 Closeout

7.1.1 Regulatory Requirements

As prescribed by 2 CFR Part 200.343, DOE or the 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 Recipient. This recipient and DOE or pass-through entity must take the following actions to complete the Closeout process at the end of the period of performance for an award:

(A) The Recipient must submit, **no later than 120 calendar days after the end date of the period of performance**, all financial, performance, and other reports as required by the terms and conditions (including the Reporting Requirements Checklist) of the Federal award. The DOE or pass-through entity may approve an extension- to the report due dates when requested and justified by the Recipient.

(B) Unless DOE or the pass-through entity authorizes an extension to the period of performance, the recipient must liquidate all obligations incurred under the Federal award not later than 120 calendar days after the end date of the period of performance as specified in the terms and conditions of the Federal award. GOs may not approve or execute extensions to the period of performance for the purpose of expending award funds.

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

(D) The Recipient 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 §200.346 *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 recipient must account for any real and personal property acquired with Federal funds or received from the Federal Government (Government Furnished Property or Equipment) in accordance with 2 CFR 200.310 *Insurance coverage* through 2 CFR 200.316 *Property trust relationship* and 2 CFR 200.330 *Reporting on real property*.

(G) When a recipient or subrecipient completes all closeout requirements, DOE or the pass-through entity must promptly complete all closeout actions for Federal awards. DOE or pass-through entity must make every effort to complete closeout actions no later than one year after the end of the period of performance unless otherwise directed by authorizing statutes. Closeout actions include Federal awarding agency actions in the grants management and payment systems.

(H) If the Recipient does not submit all reports in accordance with the regulatory closeout requirements and the terms and conditions of the Federal Award, DOE must proceed to close out with the information available within one year of the period of performance end date.

(I) If the Recipient does not submit all reports in accordance with the regulatory closeout requirements and the terms and conditions of the Federal Award within one year of the period of performance end date, DOE must report the non-Federal entity's material failure to comply with the terms and conditions of the award with the OMB-designated integrity and performance system (currently FAPIIS). DOE may also pursue other enforcement actions per §200.339.

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.

Other Closeout activities include the following DOE clearances:

- (1) financial/audit reconciliations and clearances;
- (2) 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;
- (3) Personal/real property reconciliation and disposal; and

(4) intellectual property/patent reconciliation and clearance.

7.3 DOE Required Clearances (AUG 2021)

7.3.1 Financial/Audit Reconciliation and Clearances

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.

7.3.2 Final Scientific/Technical Report and Other Required STI

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/elink/>. 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 of 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/>.

7.3.3 Personal/Real 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, Subsection 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>.

7.3.4 Intellectual Property/Patents

If applicable, the recipient must provide a final DOE F 2050.11, Patent Certification, <https://energy.gov/sites/prod/files/SF-2050.11%20C%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>.

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.

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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 as a competitive or non-competitive basis.

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(PI) 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.