


COUNCIL ON GOVERNMENTAL RELATIONS

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March 22, 1989

TO: PRIMARY REPRESENTATIVES OF PARTICIPATING UNIVERSITIES
FROM: Milton Goldberg 
SUBJECT: Proposed Common Rule to Replace OMB Circular A-110

The Office of Management and Budget has proposed that grants management rules for all recipients of federal assistance be made uniform. To accomplish that goal, OMB has proposed that grants management requirements for colleges and universities, hospitals and other nonprofit organizations (Circular A-110) be combined with similar requirements for state and local governments (Circular A-102) and further, that all federal agencies issue a common rule to accomplish such uniformity.

A COGR task force was convened to independently examine this proposal. It concluded that there should be a separate circular and common rule covering only what is now the Circular A-110 constituency, rather than a merger with state and local government rules. The Task Force also developed a body of technical changes to the proposed rule of November 4, 1988 which would be necessary if government-funded grants and agreements were to be effectively and efficiently administered.

BACKGROUND

In June 1987, OMB announced in the Federal Register its intent to revise Circular A-110, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Nonprofit Organizations. Recognizing the significance of this announcement, COGR appointed a task force to formulate desirable changes and/or additions and to assist in developing a strategy for achieving the best possible end result.

The proposed revision became more complicated along the way when OMB proposed merging Circular A-110 with Circular A-102, Uniform Administrative Requirements for Grants and Cooperative Agreements with State and Local Governments. OMB's intent is to have the entities previously covered by the two separate circulars all be covered by a single new circular and common rule. This recommendation was formalized with publication of the proposed new circular and common rule in the November 4, 1988 Federal Register. Comments were required within sixty days - by January 3, 1989.

COGR's comments were based on the Task Force recommendations and on information received from member universities. In its letter dated December 21, 1988, COGR opposed merger of Circulars A-110 and A-102 and stated that it would support a common rule only if it covered just the constituency now covered by Circular A-110. That letter (which was distributed to the membership) included an explanation for the COGR position and also indicated that our recommendations for specific changes in the published common rule would follow by the end of March; a time frame agreed upon by COGR and OMB/DHHS. The Task Force has now completed its work on these specific changes, and I have forwarded the supplemental material to OMB/DHHS in a side-by-side comparison of the proposed

common rule and COGR's suggested changes with a rationale statement for the changes. That is a complex fifty page document, so it is not attached to this letter. What is attached is a clean version of the proposed common rule (nineteen pages) which incorporates all of the changes proposed by COGR and thus reflects the administrative requirements we think to be appropriate to academic institutions.

ACTION

Our recommendations will not be accepted by OMB/DHHS unless they receive a large volume of supportive letters from the academic community. We believe this matter to be important, and this opportunity before us to be so rare, that we are appealing to you to get off letters by the first week of April 1989. The letters must be well-informed comments based on genuine concerns at each writer's own university. It is also imperative that the letters collectively provide unequivocal support on two major points. **One is the assertion that there should be a separate circular and common rule covering only what is now the Circular A-110 constituency rather than a merger of that constituency with state and local governments.** It is apparent from letters and telephone calls received in the COGR office that many of you strongly support this view and that you have a variety of reasons for doing so. Those should be stated, or restated if you have already written once. Some of the reasons mentioned in the letters received by the COGR office are contained in Attachment 1.

Secondly, the letters collectively should provide strong support for the body of technical changes recommended by COGR to the proposed common rule published in the November 4, 1988 Federal Register. It will be helpful to say you have reviewed and support the revisions proposed by COGR. Based on your own views and unique institutional circumstances, that general statement should be supported by specific reference to certain of COGR's proposed changes that you consider most significant. For your convenience, several of the more significant changes are listed in Attachment 2. To the extent that you agree that they are important and consider them relevant to your university setting, some of these can be worked into your letter.

Letters should be addressed to:

Mr. Gary Houseknecht
Division of Assistance and Cost Policy
Department of Health and Human Services
A-110 Rulemaking Docket
Room 513-D, Hubert H. Humphrey Building
Washington, D.C. 20201

Copies should be sent to:

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Financial Management Division
Office of Management and Budget
New Executive Office Building, Room 10235
Washington, D.C. 20503

Attachments

Attachment 1

Selected Reasons Stated by Representatives of COGR Universities for Maintaining Separate Circulars/Common Rules for Colleges and Universities Distinct from State and Local Governments

- A single circular and common rule written to cover the different entities now covered separately by Circular A-110 and Circular A-102 will be unduly cumbersome, lengthy, complicated and confusing to both agency and grantee users. It is not clear when a provision applies to a college and university; to a state and local government; or to both.
- The teaching and research functions performed by colleges and universities clearly distinguish them from state and local governments which exist principally to provide governance, infrastructure and to ensure a healthy and safe environment for its citizens. Colleges and universities are, and should continue to be recognized as, a unique constituency among federal grantees.
- The broad discretion extended by the federal government to states (Federalism) is peculiar to the federal/state government interface and is not applicable to the federal government/university interface.
- Programs/projects conducted by state and local governments with federal funding (family services, transportation systems, sewer systems, water systems, etc.) are entirely different from the research and training programs conducted with federal assistance by colleges and universities. It is not realistic to impose the same administrative/fiscal requirements on the two vastly different types of programs.
- A common rule applicable to both universities and state and local governments will be unduly difficult and cumbersome to change because the effect of a given change on the quite different types of entities will be quite different.
- The wave of changes in relationships between the federal government and state governments (Federalism) has been pretty much completed during the past eight years. Conversely, many changes in the federal government/research university interface are currently being formulated in the Florida Demonstration Project, the Federal Demonstration Project and other studies/experiments. A common rule applicable only to universities will assure prompt implementation of improvements as they are defined.

Attachment 2

**Selected Changes Recommended by COGR as Compared to the Proposed Common Rule
Published in the November 4, 1988 Federal Register**

- Subpart A, Section 6 - Amended to constrain agency imposition of additional requirements, to facilitate agency waiver or delegation of certain requirements and to limit agency exceptions to the common rule to those approved by OMB.
- Subpart C, old Section 20(b)(5), new Section 20(a)(5) - Revised the reference to allowable costs to eliminate "agency program regulations." Reference to applicable OMB cost principles and the terms of grant awards only is sufficient and preferable to avoid needless confusion between program and administrative/fiscal terms.
- Subpart C, old Section 20(c), new Section 20(b) - Amended to add the expectation that the review of the adequacy of a recipient's financial management system will be performed by the cognizant agency. It is confusing to have multiple agencies involved in such matters.
- Subpart C, Section 21(c) - Amended to assure that advance funding will be available to grantees and subgrantees unless the recipient is defined as high risk.
- Subpart C, Section 21(g)(ii) - Expanded to cite OMB Circular A-129 as the basis for defining when a grantee or subgrantee is delinquent on a debt to the U.S. This will avoid confusion and most controversy.
- Subpart C, old Section 24(b)(6), new Section 24(d)(1) - Deleted unnecessary and confusing language concerning third party in-kind contributions for cost sharing.
- Subpart C, Section 25 - Revised the priority order of the three options for handling program income.
- Subpart C, old Section 25(e), new Section 25(c) - Revised the language to more clearly describe the handling of royalty income and more tightly define where royalties will be considered program income.
- Subpart C, old Section 26(b), new Section 26(a) - Revised and simplified the language by including a reference to obtaining audits in accordance with the provisions of OMB Circular A-128 or A-133 as appropriate, and to limit the obligation of grantees relative to subgrantee audits.
- Old Subpart F, new Subpart C, Section 30 - Introduced a series of revisions to fold in already existing agency prior approval delegations and improvements derived from the Florida Demonstration Project.
- Subpart C, Section 36 - Revised substantially to bring procurement standards into a form that is responsive to the unusual and frequently unpredictable needs of research programs. The revisions are also designed to avoid the unnecessary and counter productive micromanagement inherent in the original language.

- Subpart C, Section 37 - Revised to properly limit the responsibility of grantees in connection with subawards. That responsibility includes making the subgrantee aware of the required administrative/fiscal provisions and affirming the subgrantee's obligation to comply with those provisions, but not to impose upon the grantee an obligation to behave like a funding agency.

COGR PROPOSAL - TEXT OF COMMON RULE

PART ___--UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS AND OTHER NONPROFIT ORGANIZATIONS

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- ___30 Changes.
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- ___40 Monitoring and reporting program performance.
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- ___43 Enforcement.
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Subpart A--General

Section ___1 Purpose and scope of this part.

The part establishes uniform administrative requirements for Federal grants and cooperative agreements and subawards to institutions of higher education, hospitals, and other nonprofit organizations.

Section ___2 Scope of subpart.

This subpart contains general rules pertaining to this part and procedures for control of exceptions from this part.

Section ___3 Definitions.

As used in this part:

"Accrued expenditures" mean the charges incurred by the grantee during a given period requiring the provision of funds for:

(1) Goods and other tangible property received;

(2) Services performed by employees, contractors, subgrantees, subcontractors, and other payees; and

(3) Other amounts becoming owed under programs for which no current services or performance is required, such as annuities, insurance claims, and other benefit payments.

"Accrued income" means the sum of:

(1) Earnings during a given period from services performed by the grantee and goods and other tangible property delivered to purchasers, and

(2) Amounts becoming owed to the grantee for which no current services or performance by the grantee is required.

"Acquisition cost" of an item of purchased equipment means the net invoice unit price of the equipment including the cost of modifications, attachments, accessories or auxiliary apparatus necessary to make the equipment usable for the purpose for which it was acquired. Other charges such as the cost of installation, transportation, taxes, duty or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the grantee's regular accounting practices.

"Administrative" requirements mean those matters common to grants in general, such as financial management, kinds and frequency of reports, and retention of records. These are distinguished from "programmatic" requirements, which concern matters that can be treated only on a program-by-program or grant-by-grant basis,

such as kinds of activities that can be supported by grants under a particular program.

"Awarding agency" means, with respect to a grant, the Federal agency, that made the award.

"Cash contributions" means the grantee's cash outlay, including the outlay of money contributed to the grantee or subgrantee by other public agencies and institutions, and private organizations and individuals. When authorized by Federal legislation. Federal funds received from other assistance agreements may be considered as grantee or subgrantee cash contributions.

"Contract" means a procurement contract under a grant, subgrant, or cooperative agreement.

"Cost sharing or matching" means the costs of a federally assisted project or program not borne by the Federal Government.

"Cost-type contract" means a contract or subcontract under a grant in which the contractor or subcontractor is paid on the basis of the costs it incurs, with or without a fee.

"Debarment" has the meaning set out in the Definition and Coverage sections of the agency rules implementing E.O. 12549.

"Equipment" means tangible, nonexpendable, personal property having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit. A grantee shall use its own definition of equipment provided that such definition would at least include all equipment defined above.

"Expenditure report" means: (1) For nonconstruction grants, the SF-269 "Financial Status Report" (or other equivalent report); (2) for construction grants, the SF-271 "Outlay Report and Request for Reimbursement" (or other equivalent report).

"Funding period" means the period of time when Federal financial assistance is available for use of obligated funds by the grantee.

"Grant" means money or property provided in lieu of money paid or furnished by the Federal Government to recipients under programs that provide financial assistance or that provide support or stimulation to accomplish a public purpose. The term does not include technical assistance which provides services instead of money, or other assistance in the form of revenue sharing, loans, loan guarantees, interest subsidies, insurance, or direct appropriations. Also, the term does not include assistance, such as a fellowship or other lump sum award, for which the grantee is not required to account on an actual cost basis.

"Grantee" means the institution of higher education, hospital, or other non profit organization to which a grant is awarded and which is accountable for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award document.

"Intangible property and debt instruments" means:

(a) Intangible property, including trademarks, copyrights, patents and patent applications (except for a "subject invention" as the term is used in 37 CFR Part 401), and

(b) Such property as loans, notes, and other debt instruments, whether considered tangible or intangible.

"Obligations" means the amounts of orders placed, contracts and subgrants awarded, goods and services received, and similar transactions during a given period that will require payment by the grantee during the same or a future period.

"OMB" means the United States Office of Management and Budget.

"Outlays" (expenditures) mean charges made to the project or program. They may be reported on a cash or accrual basis. For reports prepared on a cash basis, outlays are the sum of actual cash disbursement for direct charges for goods and services, the amount of indirect expense incurred, the value of in-kind contributions applied, and the amount of cash advances and payments made to contractors and subgrantees. For reports prepared on an accrued expenditure basis, outlays are the sum of actual cash disbursements, the amount of indirect expense incurred, the value of in-kind contributions applied, and the new increase (or decrease) in the amounts owed by the grantee for goods and other property received, for services performed by employees, contractors, subgrantees, subcontractors, and other payees, and other amounts becoming owed under programs for which no current services or performance are required, such as annuities, insurance claims, and other benefit payments.

"Percentage of completion method" refers to a system under which payments are made for construction work according to the percentage of completion of the work, rather than to the grantee's cost incurred.

"Personal property" means any kind of property except real property. It may be tangible-having physical existence, or intangible-having no physical existence, such as patents, inventions and copyrights.

"Prior approval" means documentation evidencing prior consent.

"Real property" means land, including land improvements, structures and appurtenances thereto, excluding movable machinery and equipment.

"Share," when referring to the awarding agency's portion of real property, equipment or supplies, means the percentage of its acquisition cost paid with the Federal funds provided.

"State" means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State exclusive of institutions of higher education, hospitals and units of local government.

"Subgrant" means an award of financial assistance in the form of money, or property in lieu of money, made under a grant by a grantee to an eligible subgrantee. The term includes financial assistance when provided by contractual legal agreement, but does not include procurement purchases, nor does it include any form of assistance which is excluded from the definition of "grant" in this part.

"Subgrantee" means the legal entity to which a subgrant is awarded and which is accountable to the grantee for the use of the funds provided.

"Supplies" means all tangible personal property other than equipment.

"Suspension" means depending on the context, either (1) temporary withdrawal of the authority to obligate grant funds pending corrective action by the grantee or subgrantee or a decision to terminate the grant, or (2) an action taken by a suspending official in accordance with agency regulations implementing E.O. 12549 to immediately exclude a person from participating in grant transactions for a period, pending completion of an investigation and such legal or debarment proceedings as may ensue.

"Termination" means permanent withdrawal of the authority to obligate previously-awarded grant funds before that authority would otherwise expire. It also means the voluntary relinquishment of that authority by the grantee or subgrantee. "Termination" does not include:

(1) Withdrawal of funds awarded on the basis of the grantee's underestimate of the unobligated balance in a prior period:

(2) Withdrawal of the unobligated balance as of the expiration of a grant:

(3) Refusal to extend a grant or award additional funds, to make a competing or noncompeting continuation, renewal, extension, or supplemental award; or

(4) Voiding of a grant upon determination that the award was obtained fraudulently, or was otherwise illegal or invalid from its inception.

"Terms of a grant or subgrant" means all requirements of the grant or subgrant, whether in statute, regulations, or the grant award.

"Third party in-kind contributions" means property or services which benefit a federally assisted project or program and which are contributed by non-Federal third parties without charge to the grantee, or a cost-type contractor under the grant award.

"Unliquidated obligations" for reports prepared on a cash basis means the amount of obligations incurred by the grantee that has not been paid. For reports prepared on an accrued expenditure basis, they represent the amount of obligations incurred by the grantee for which an outlay has not been recorded.

"Unobligated balance" means the portion of the funds authorized by the Federal agency that has not been obligated by the grantee and is determined by deducting the cumulative obligations from the cumulative funds authorized.

Section ____-4 Applicability.

(a) General. This part applies to all grants and subgrants to institutions of higher education, hospitals, and other nonprofit organizations except where a provision is inconsistent with Federal statutes or with regulations authorized in accordance with the provision of section__6.

Section ____-5 Effect on other issuances.

All other administrative requirements of codified program regulations, program manuals, handbooks and other nonregulatory materials which are inconsistent with this part are superseded, except to the extent they are required by statute, or authorized in accordance with the provision in section__6.

Section ____-6 Additions, waivers/delegations, and exceptions.

(a) Additions. For classes of grants and grantees subject to this part [agency] shall not impose additional administrative requirements except as provided by statute.

(b) Waiver and Delegation. [agency] may waive or delegate to grantees authorities in this part.

(c) Exceptions. Exceptions on a case-by-case basis may be authorized by [agency] only with approval from OMB.

Subpart B--Pre-Award Requirements.

Section _____.10 Forms for applying for grants.

(a) Authorized forms and instructions.

(1) In applying for grants, applicants shall only use standard application forms or those prescribed by [agency] with the approval of OMB under the Paperwork Reduction Act of 1980.

(2) Applicants must follow all applicable instructions that bear OMB clearance numbers.

Section _____.11 Special grant or subgrant conditions for high-risk grantees.

(a) Definition. A grantee or subgrantee may be considered high-risk if an awarding agency determines that a grantee or subgrantee:

(1) Has a history of unsatisfactory performance, or

(2) is unable to prove financial stability

(3) Has a management system which does not meet the management standards set forth in this part, or ;

(4) Has not conformed to terms and conditions of previous awards, by a judgment of an appropriate hearing appeal or other administrative proceeding to which the grantee is entitled under any statute or regulation applicable to the action.

(b) Determination. If the awarding agency determines that an award will be made, then, notwithstanding section _____6, special conditions and/or restrictions that correspond to the high-risk condition shall be included in the award.

(c) Special conditions. Special conditions or restrictions may include but are not limited to:

(1) Payment on a reimbursement basis:

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

(3) Requiring additional, more detailed financial reports;

(4) Additional project monitoring;

(5) Requiring the grantee or subgrantee to obtain technical or management assistance; or

(6) Establishing additional prior approvals.

(d) Due process. If an awarding agency decides to impose such conditions, the awarding official will notify the grantee or subgrantee as early as possible, in writing, of:

(1) The nature of the special conditions/restrictions;

(2) The reasons(s) for imposing them;

(3) The corrective actions which must be taken before they will be removed and the time allowed for completing the corrective actions; and

(4) The method of requesting reconsideration of the conditions/restrictions imposed.

(e) Disputes. Any dispute relating to an inclusion of special conditions shall be handled by the procedures indicated at Section _____.43 Hearings, Appeals.

Subpart C--Post-Award Requirements

Financial Administration

Section _____.20 Standards for financial management systems.

(a) Standards. The financial management systems of grantees and subgrantees must meet the following standards:

(1) Financial reporting. Accurate, current, and complete disclosure of the financial results of financially assisted activities must be made in accordance with the financial reporting requirements of the grant or subgrant.

(2) Accounting records. Grantees and subgrantees must maintain records which adequately identify the source and application of funds provided for financially-assisted activities. These records must contain information pertaining to grant or subgrant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures, and income.

(3) Internal control. Effective control and accountability must be maintained for all grant and subgrant cash, real and personal property, and other assets. Grantees and subgrantees shall adequately safeguard all such property and must assure that it is used solely for authorized purposes.

(4) Budget control. Actual expenditures or outlays must be compared with budgeted amounts for each grant or subgrant. Whenever specifically required in the grant or

subgrant agreement, financial information must be related to performance or productivity data, including the development of unit cost information. If unit cost data are required, estimates based on available documentation will be accepted whenever possible.

(5) Allowable cost. Applicable OMB cost principles, and the terms of grant and subgrant awards must be followed in determining the reasonableness, allowability, and allocability of costs.

(6) Source documentation. Accounting records must be supported by such source documentation as cancelled checks, paid bills, payrolls, contract and subgrant award documents.

(7) Cash management. Grantees shall establish reasonable procedures for minimizing the time elapsing between the transfer of funds from the U.S. Treasury and disbursement by grantees and subgrantees whenever advance payment procedures are used. When advances are made by letter-of-credit or electronic transfer of funds methods, the grantee shall make drawdowns as close as possible to the time of making disbursements. Subgrantees shall conform substantially to the same standards of timing and amount as apply to the grantees.

(b) Review. An awarding agency may review the adequacy of the financial management system of any applicant for financial assistance as part of a preaward review or at any time subsequent to award. If a cognizant agency is assigned to the grantee or subgrantee, the cognizant agency shall perform this review.

Section ____-21 Payment.

(a) Scope. This section prescribes the basic standard and the methods under which [agency] makes payments to grantees, and grantees will make payments to subgrantees.

(b) Basic standard. Methods and procedures for payment must minimize the time elapsing between the transfer of funds and disbursement by the grantee or subgrantee, in accordance with Treasury regulations at 31 CFR Part 205.

(c) Advances. Unless the recipient of funds is defined as high-risk, as provided in Section ____-11, grantees and subgrantees must be paid in advance, provided they maintain procedures to minimize the time elapsing between the transfer of the funds and their disbursement.

(1) Advance payments. Requests for Treasury check advance payments must be submitted on Standard Form 270, Request for Advance or Reimbursement. (This form must not be used for drawdowns under a letter of credit, electronic funds transfer or when Treasury check advance

payments are made to the grantee automatically on a predetermined basis.) Requests for electronic transfer of funds or advance payments must use TFS Form 5805, Request for Funds.

(d) Reimbursement. (1) Reimbursement is the preferred method when the requirements in paragraph (c) of this section are not met. Grantees and subgrantees may also be paid by reimbursement for any construction grant. Except as otherwise specified in regulation, [agency] shall not use the percentage of completion method to pay construction grants. The grantee or subgrantee may use that method to pay its construction contractor, and if it does, the awarding agency's payments to the grantee or subgrantee must be based on the grantee's or subgrantee's actual rate of disbursement. Grantees and subgrantees may submit requests for reimbursement monthly, and submit them more often if authorized by the awarding agency. The grantee and subgrantee will be paid as promptly as possible, ordinarily within 30 days after receipt of a proper request for reimbursement.

(2) Requests for reimbursement under nonconstruction grants must also be submitted on Standard Form 270. (For reimbursement requests under construction grants see ____-41(d)(1).

(3) The frequency for submitting payment requests is treated in Subsection ____-41.(b)(3).

(e) Working capital advances. If a grantee or subgrantee cannot meet the criteria for advance payments described in paragraph (c) of this section, and the awarding agency has determined that reimbursement is not feasible because the grantee or subgrantee lacks sufficient working capital, the awarding agency may provide cash on a working capital basis. Under this procedure the awarding agency shall advance cash to the grantee or subgrantee to cover its estimated disbursement needs for an initial period generally geared to the grantee's disbursing cycle. Thereafter, the awarding agency shall reimburse the grantee or subgrantee for its actual cash disbursements. The working capital advance method of payment must not be used by grantees or subgrantees if the reason for using such method is the unwillingness or inability of the grantee to provide timely advances to the subgrantee to meet the subgrantee's actual cash disbursements.

(f) Effect of program income, refunds, and audit recoveries on payment. Grantees and subgrantees shall disburse program income, rebates, refunds, contract settlements, audit recoveries and interest earned on each award before requesting additional cash payments.

(g) Withholding payments. (1) Unless otherwise required by Federal statute, awarding agencies shall not withhold payments for proper

charges incurred by grantees or subgrantees unless--

(i) The grantee or subgrantee has failed to comply with grant award conditions; or

(ii) The grantee or subgrantee is delinquent on a debt to the United States as defined in OMB Circular A-129.

(2) Cash withheld for failure to comply with grant award conditions but without suspension of the grant, must be released to the grantee upon subsequent compliance. When a grant is suspended, payment adjustments must be made in accordance with section _____.43(c).

(h) Cash depositories. A grantee or subgrantee shall not be required to maintain a separate bank account except when required under a "checks-paid" letter of credit.

Section _____.22 Allowable costs.

(a) Limitation on use of funds. Grant funds must be used only for the (1) allowable costs of the grantees, subgrantees and contractors, and

(2) Reasonable fees or profit to cost-type contractors but not any fee or profit (or other increment above allowable costs) to the grantee or subgrantee.

(b) Applicable cost principles. For each kind of organization, there is a set of Federal principles for determining allowable costs. Allowable costs will be determined in accordance with the cost principles applicable to the organization incurring the costs. The following chart lists the kinds of organizations and the applicable cost principles.

For the costs of a-: Use the principles in-:

Private nonprofit organization other than an (1) institution of higher education, (2) hospital or (3) organization named in OMB Circular A-122 as not subject to that circular. Circular A-122

Educational institutions Circular A-21

Section _____.23 Period of availability of funds.

(a) General. Where a funding period is specified, a grantee may charge to the award costs resulting from obligations of the funding period as defined herein:

(1) Prior approval is required for preagreement costs incurred more than 90 days before the beginning date of the award. The grantee incurs costs at its own risk should Federal funding not occur.

(2) The grantee may extend a project without prior approval for a period not to exceed 12 months after the expiration of the funding period if:

(i) The extension does not require the obligation by [agency] of additional Federal funds;

(ii) The extension does not involve any change in the approved objectives or scope of the project; and

(iii) The grantee notifies the [agency] in writing at least ten days before the end of the funding period.

(3) A grantee may carry over from one funding period to the next funding period any unobligated balance of funds. [agency] may require the grantee to notify [agency] (e.g., on the Financial Status Report) of the amount of the unobligated balance that was carried over.

(b) Liquidation of obligations. A grantee shall liquidate all obligations incurred under the award not later than 90 days after the end of the funding period to coincide with the submission of the annual Financial Status Report (SF-269). The Federal agency may extend this deadline at the request of the grantee.

Section _____.24 Matching or cost sharing.

(a) Basic rule: Costs and contributions acceptable. With the qualifications and exceptions listed in paragraph (b) of this section, a matching or cost sharing requirement may be satisfied by either or both of the following:

(1) Allowable costs incurred by the grantee, subgrantee or a cost-type contractor award under the assistance award. This includes allowable costs borne by non-Federal grants or by others cash donations from non-Federal third parties.

(2) The value of third party in-kind contributions applicable to the period to which the cost-sharing or matching requirements applies.

(b) Qualifications and exceptions.

(1) Costs borne by other Federal grant awards. Except as provided by Federal statute, a cost-sharing or matching requirement, may not be met by costs borne by another Federal grant.

(2) Costs of contributions counted towards other Federal costs-sharing requirements. Costs or the values of third party in-kind contributions may count only once towards satisfying a cost-sharing or matching requirement of a grant award.

(3) When a grantee acquires equipment and/or facilities as part of a cost-sharing requirement, the value of such equipment and/or facilities may be used subsequently in the grantee's calculation of indirect costs.

(c) Records. Costs and third party in-kind contributions counting towards satisfying a cost-sharing or matching requirement must be verifiable from the records of grantees and subgrantees or cost-type contractors.

(d) Special standards for third party in-kind contributions. (1) Third party in-kind contributions may satisfy a cost-sharing or matching requirements only when the payments would be allowable costs of the party receiving the contributions were to pay for them.

(2) The values placed on third party in-kind contributions for cost-sharing or matching purposes must conform to the rules in the succeeding sections of this part. If a third party in-kind contribution is a type not treated in those sections, the value placed upon it shall be fair and reasonable.

(e) Valuation of donated services. (1) Volunteer services. Unpaid services provided to a grantee or subgrantee by individuals must be valued at rates consistent with those ordinarily paid for similar work in the grantee's or subgrantee's organization. A reasonable amount for fringe benefits may be included in the valuation.

(2) Employees of other organizations. When an employer other than a grantee, subgrantee, or cost-type contractor furnishes free of charge the services of an employee, the service must be valued at the employee's regular rate of pay.

(f) Valuation of third party donations. (1) If a third party donates supplies, the contribution must be valued at the market value of the supplies at the time of donation.

(2) If a third party donates the use of equipment or space in a building but retains title, the contribution must be valued at the fair rental rate of the equipment or space.

(3) If a third party donates equipment, buildings, or land, and title passes to a grantee or subgrantee, the contribution must be valued at the market value of the equipment, buildings, or land at the time of donation.

(g) Valuation of grantee or subgrantee donated real property for construction/acquisition. If a grantee or subgrantee donates real property for a construction of facilities acquisition project, the current market value of that property may be counted as cost-sharing or matching. If any part

of the donated property was acquired with Federal funds, only the non-federal share of the property may be counted as cost-sharing or matching.

(h) Appraisal of real property. In some cases under paragraphs of this section, it will be necessary to establish the market value of land or a building or the fair rental rate of land or of space in building. In these cases, agency may require the market value or fair rental value be set by an independent appraiser.

Section _____.25 Program Income.

(a) Definition of program income. Program income means gross income received by the grantee or subgrantee directly generated by a grant supported activity, or earned only as a result of the grant award during the funding period. Except as otherwise provided in regulations of the Federal agency, program income does not include interest on grant funds, rebates, credits, discounts, refunds, etc. and interest earned on any of them.

(b) Cost of generating program income. If authorized by Federal regulations or the grant award, costs incident to the generation of program income may be deducted, if not already charged to the grant, from gross income to determine program income.

(c) Royalties.

(1) Income from royalties and license fees for patents, patent applications, trademarks, and inventions developed by a grantee or subgrantee is not program income. (See Section _____.34)

(2) Income from royalties and license fees for copyrighted material developed by a grantee or subgrantee is program income only if the revenues are specifically identified in the grant award as program income.

(d) Property. Proceeds from the sale of real property or equipment will be handled in accordance with the requirements in sections _____.31 and _____.32.

(e) Use of program income. Program income, at the option of the grantee, may be added to the funds committed to the project or deducted from outlays which may be both Federal and non-Federal as described below, unless the [agency] regulations or the grant award specify the particular alternative (or a combination of the alternatives). In specifying alternatives, [agency] may distinguish between income earned by grantees and income earned by subgrantees and between the sources, kinds, or amounts of income.

(1) Addition. Program income may be added to the funds committed to the grant award by [agency] and the grantee. The program income

must be used for the purposes and under the conditions applicable to the use of the grant funds.

(2) Cost sharing or matching. Program income may be used to meet the cost-sharing or matching requirements of the grant award. The amount of the Federal grant award remains the same.

(3) Deduction. Program income may be deducted from total allowable costs to determine the net allowable costs. Program income shall be used for current costs unless [agency] authorizes otherwise.

(f) Income after funding period. There are no Federal requirements governing the disposition of program income earned after the end of the funding period.

Section _____.26 Non-Federal Audit

(a) Grantee audits. Grantees and subgrantees shall obtain audits in accordance with the provisions of OMB Circular A-128 or A-133, as appropriate.

Changes, Property, and Subawards

Section _____.30 Changes.

(a) General. Grantees and subgrantees are permitted to rebudget within the approved budget and may make limited program changes to the approved project. However, as provided in (c) and (d) below, unless waived by the awarding agency, certain types of post-award changes in budgets and projects shall require the prior written approval of the awarding agency.

(b) Relation to cost principles. The applicable cost principles (see section _____.22) contain requirements for certain types of costs. The requirement for prior approval of expenditures under the applicable cost principles does not apply.

(c) Budget changes. (1) Nonconstruction projects. Grantees or subgrantees shall obtain the prior approval of the awarding agency only when any of the following changes is anticipated under a nonconstruction award:

(i) Any revision which would result in the need for additional funding.

(ii) Transfer of funds allotted for trainee costs (stipends, tuition and fees) to other expense categories.

(2) Construction projects. Grantees and subgrantees shall obtain prior written approval for any budget revision which would result in the need for additional funds.

(3) Combined construction and nonconstruction projects. When a grant of subgrant provides funding for both construction and nonconstruction activities, the grantee or subgrantee shall obtain prior written approval from the awarding agency before making any fund or budget transfer from nonconstruction to construction or vice versa.

(d) Programmatic changes. Grantees or subgrantees shall obtain the prior approval of the awarding agency whenever any of the following actions is anticipated:

(1) Any revision of the scope or objectives of the project (regardless of whether there is an associated budget revision requiring prior approval).

(2) Need to extend the period of availability of funds beyond that provided in Subsection _____.23(a)(2).

(3) The absence of an approved project director or principal investigator for more than 3 months. A change in the project director or principal investigator shall always require approval unless waived by the awarding agency.

(e) Changes involving third parties.

(1) Under nonconstruction projects, subgrant effort in excess of \$25,000 requires notification by the grantee or subgrantee to the [agency]. This approval requirement does not apply to the procurement of equipment, supplies and general support services.

(2) If a grantee or subgrantee wants to transfer a grant to a substitute organization, the grantee or subgrantee shall request the awarding agency to approve the transfer of the grant or subgrant to a substitute grantee or subgrantee.

(f) Additional prior approval requirements. The awarding agency may not require prior approval for any budget revision which is not described in paragraph (c) of this section.

(g) Requesting prior approval. (1) A grantee or subgrantee's request for prior approval must clearly indicate the activities and/or budget categories affected by the request and include a justification for the proposed revision.

(2) If the revision, requested by the subgrantee would result in a change to the grantee's approved project which requires Federal prior approval, the grantee shall obtain the [agency]'s approval before approving the subgrantee's request.

(h) Waiver or Delegation. [agency] may waive or delegate to grantees any prior approvals required by this Section.

Section ____ .31 Real property.

(a) Title. Subject to the obligations and conditions set forth in this section, title to real property acquired under a grant or subgrant vests upon acquisition in the grantee or subgrantee respectively.

(b) Use. Except as otherwise provided by Federal statutes, real property must be used for the originally authorized purpose as long as needed for that purpose. The grantee or subgrantee shall use real property in other projects when the recipient determines that the real property is no longer needed for the purposes of the original project. Use in other projects shall be limited to grants or other agreements or programs that have purposes consistent with those authorized for support by [agency].

(c) Insurance. Upon acquiring real property with Federal grant support a grantee or subgrantee shall determine that it has either an insurance policy or a program of self-insurance, or a combination of both that adequately protects the interests of the [agency].

(d) Disposition. (1) While the grant is still active, the grantee shall not dispose of or encumber its title without prior written approval from [agency].

(2) Sale of property. While the grant is still active and with prior written approval from [agency], the grantee or subgrantee may sell the property and compensate the awarding agency for its share after the deduction of any actual and reasonable selling and fixing-up expenses. The net proceeds from sale may be offset against the original cost of the property.

(3) Transfer of title. While the grant is still active and with prior written approval from [agency], the grantee or subgrantee may transfer title to the awarding agency or to a third-party designated/approved by the awarding agency. The grantee or subgrantee must be paid an amount calculated by applying the grantee or subgrantee's percentage of participation in the purchase of the real property to the current fair market value of the property.

Section ____ .32 Equipment.

(a) Title. (1) When statutory authority exists (for example, P.L. 85-934, 42 U.S.C. 1892), agency shall vest title to the grantee in equipment purchased with grant funds by nonprofit institutions of higher education or by nonprofit organizations, whose primary purpose is the conduct of scientific research. When

title is vested to the grantee under this authority, the grantee has no further obligation to the Federal Government.

(2) Except as provided in (1) above, title to equipment acquired under a grant or subgrant vests upon acquisition in the grantee or subgrantee respectively, subject to the obligations and conditions in paragraphs (b), (c), and (d) below.

(b) Use. (1) Equipment must be used by the grantee or subgrantee in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds. When no longer needed for the original program or project, the equipment may be used in other activities currently or previously supported by a Federal agency.

(2) The grantee or subgrantee shall also make equipment available for use on other projects or programs currently or previously supported by the Federal Government, providing such use does not interfere with the work on the projects or programs for which it was originally acquired.

(3) The grantee or subgrantee shall not use equipment acquired with grant funds to provide services for a fee to compete unfairly with private companies that provide equivalent services, unless specifically permitted or contemplated by Federal statute.

(4) When acquiring replacement equipment, the grantee or subgrantee may use the equipment to be replaced as a trade-in or sell the equipment and use the proceeds to offset the cost of the replacement equipment.

(c) Management requirements. Procedures for managing equipment whether acquired in whole or in part with grant funds, must meet the following requirements:

(1) Equipment records must be maintained that include a description of the equipment, a serial number or other identification number, the source of equipment, who holds title, the acquisition date, and cost of the equipment, amount of federal funds used in the purchase of the equipment, the location and, where appropriate, its disposition.

(2) A physical inventory of the equipment must be taken and the results reconciled with the equipment records at least once every two years.

(3) A grantee or subgrantee shall have adequate safeguards to prevent loss, damage, or theft of the equipment. Any loss, damage or theft shall be investigated.

(d) Disposition. When original or replacement equipment acquired under a grant or subgrant is no longer needed for the original project or program or for other activities currently or previously supported by a Federal agency, disposition of the equipment must be made as follows:

(1) Items of equipment with a current value in excess of \$5,000 may be retained or sold and the awarding agency must be compensated for its share after the deduction of any actual and reasonable selling expenses.

(2) In cases where a grantee or subgrantee fails to take appropriate disposition actions, the awarding agency may direct the grantee or subgrantee to take such action.

(3) If the grantee is instructed to ship the equipment to a new location, the awarding agency shall reimburse the grantee for any reasonable shipping and interim storage costs incurred.

(e) Right to transfer title. [Agency] reserves the right to transfer title to grant acquired equipment to the Federal Government or a third party named by the awarding agency when such a third party is otherwise eligible under existing statutes. Such transfers are subject to the following standards:

(1) The equipment must be identified in the grant or otherwise made known to the grantee in writing.

(2) [Agency] shall issue disposition instruction within 120 calendar days after the end of the Federal support of the project for which it was acquired. If the [agency] fails to issue disposition instructions within the 120 calendar-day period the grantee shall follow paragraph (e) of this section.

(3) When title to equipment is transferred, the grantee must be compensated for its share.

(f) Federal equipment. In the event a grantee or subgrantee is provided federally-owned equipment:

(1) Title remains vested in the Federal Government.

(2) Grantees or subgrantees shall manage the equipment in accordance with [agency] rules and procedures, and submit an annual inventory listing.

(3) When the equipment is no longer needed, the grantee or subgrantee shall request disposition instructions from the [agency].

Section _____.33 Supplies.

(a) Title. Title to supplies acquired under a grant or subgrant vests upon acquisition, in the grantee or subgrantee respectively.

(b) Disposition. If there is a residual inventory of unused supplies exceeding \$5,000 in total fair market value upon termination or completion of the grant support and if the supplies are not needed for any other federally sponsored programs or projects the grantee or subgrantee shall endeavor to sell the supplies and, if successful, shall compensate the awarding agency for its share.

Section _____.34 Copyrights and patents.

(a) Rights. (1) A grantee or subgrantee may copyright any work that is subject to copyright and was developed, or for which ownership was purchased, under the grant, subgrant, or contract under a grant or subgrant.

(2) [agency] reserves, for Federal Government purposes, a royalty-free, nonexclusive, and irrevocable license to:

(i) Reproduce, publish, or otherwise use the work; and

(ii) Authorize others to reproduce, publish, or otherwise use the work.

(b) Obligations. Grantees and subgrantees are subject to government-wide regulations governing patents and inventions issued by the Department of Commerce at 37 CFR Part 401.

Section _____.35 Subawards to debarred and suspended parties.

Grantees and subgrantees, shall not make any award or permit any award (subgrant or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs in violation of the regulations implementing Executive Order 12549. "Debarment and Suspension."

Section _____.36 Procurement.

(a) Procurement standards. (1) Grantees and subgrantees shall use their own procurement procedures and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this section.

(2) Grantees and subgrantees shall maintain a contract administration system which ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(3) No employee, officer or agent of the grantee or subgrantee shall participate in the selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Therefore, grantees and subgrantees shall have policies governing the performances of their employees engaged in the award and administration of contracts.

(4) Grantee and subgrantee procedures must provide for a review of proposed procurements to avoid purchase of unnecessary items.

(5) Grantees and subgrantees shall take appropriate steps to foster economy and efficiency in their procurement actions.

(6) Grantees and subgrantees shall make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Considerations must be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

(7) Grantees and subgrantees shall maintain records sufficient to detail the significant history of a procurement. Procurement records for purchases in excess of \$25,000 shall include the following:

- (i) basis for contractor selection;
- (ii) justification for lack of competition when competitive bids or offers are not obtained; and
- (iii) basis for award cost or price.

(8) Grantees and subgrantees may use time and material type contracts only:

- (i) After a determination that no other contract is suitable, and
- (ii) If the contract includes a ceiling price that the contractor exceeds at its own risk.

(9) Grantees and subgrantees alone shall be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurement. Federal agencies shall not substitute their judgment for that of the grantee or subgrantee unless the matter is primarily a Federal concern. Violations of law will be referred to the local, State, or Federal authority having proper jurisdiction.

(10) Grantees and subgrantees shall have protest procedures to handle and resolve

disputes relating to their procurements and shall in all instances disclose information regarding the protest to the awarding agency. A protestor must exhaust all administrative remedies with the grantee and subgrantee before pursuing a protest with [agency]. Reviews of protests by the [agency] are limited to:

(i) Violations of Federal law or regulations and standards of this section (violations of State or local law will be under jurisdiction of State or local authorities); and

(ii) Violations of the grantee's or subgrantee's protest procedures for failure to review a complaint or protest. Protests received by [agency] other than those specified above must be referred to the grantee or subgrantee.

(b) Competition. (1) Unless prescribed by statute, all procurement transactions must be conducted in a manner providing full and open competition consistent with the standards of this section.

(2) Grantees shall have written selection procedures for procurement transactions. These procedures must ensure that all solicitations:

(i) Incorporate a clear and accurate description of the technical requirements for the material, product or service to be procured. Such description must not, in competitive procurements, contain features which unduly restrict competition. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description may be used as a means to define the performance or other salient requirements of a procurement. The specific features of the named brand that must be met by offerors shall be clearly stated; and

(ii) Identify all requirements that the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(c) Methods of procurement to be followed. (1) Procurement by small purchase procedures. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than \$25,000 in the aggregate. If small purchase procurements are used, price or rate quotations shall be obtained from an adequate number of qualified sources.

(2) Procurement by sealed bid. Bids are publicly solicited and a firm-fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation to bid, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in paragraph (c)(2)(i) of this section apply.

(i) In order for sealed bidding to be feasible, the following conditions should be present:

(A) A complete, adequate, and realistic specification or purchase description;

(B) Two or more responsible bidders are willing and able to compete effectively for the business; and

(C) The procurement lends itself to a firm fixed-price contract and the selection of the successful bidder can be made principally on the basis of price.

(ii) If sealed bids are used, the following requirements apply:

(A) The invitation for bids must be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for opening the bids;

(B) The invitation for bids, which must include any specification and pertinent attachments, must define the items or services in order for the bidder to properly respond;

(C) All bids must be publicly opened at the time and place prescribed in the invitation for bids;

(D) A firm fixed-price contract award must be made in writing to the lowest responding and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation costs, and life cycle costs shall be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

(E) Any or all bids may be rejected if there is a sound documented reason.

(3) Procurement by competitive proposals. The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed-price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

(i) Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical;

(ii) Proposals must be solicited from an adequate number of qualified sources;

(iii) Grantees and subgrantees must have a method for conducting technical evaluation of the proposals received and for selecting awardees;

(iv) Awards must be made to the responsible organization whose proposal is most advantageous to the program, with price and other factors considered, and

(v) Grantees and subgrantees may use competitive proposal procedures for qualifications based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method where price is not used as a selection factor can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services.

(4) Procurement by noncompetitive proposals. Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate.

(i) Procurement by noncompetitive proposals may be used only when the award of the contract is infeasible under small procurement procedures, sealed bids or competitive proposals and one of the following circumstances applies:

(A) The item is available only from a single source;

(B) The public exigency or emergency for the requirement does not permit a delay resulting from competitive solicitation;

(C) The awarding agency authorizes noncompetitive proposals; or

(D) After solicitation of a number of sources, competition is determined inadequate.

(d) Contracting with small and minority firms, women's business enterprises and labor surplus area firms. The grantee and subgrantee shall take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus firms are used when possible.

(e) Contract cost and price. (1) Grantees and subgrantees shall perform a cost or price analysis in connection with every procurement action including contract modifications. The method and degree of analysis depends on the fact surrounding the particular procurement situation. A cost analysis must be performed when (i) the offeror is required to submit the elements of his estimated cost, e.g., under professional, consulting, and

architectural/engineering services contracts, (ii) when adequate price competition is lacking, and (iii) for sole source procurements, including contract modifications or change orders.

(2) If profit or fee is included in the price, grantees and subgrantees shall negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

(3) Variances between estimated and actual costs for contracts and grants or subgrants are allowable provided they are reasonable and consistent with Federal cost principles (see .22). Grantees may reference their own cost principles that comply with the applicable Federal cost principles.

(4) The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

(f) Awarding agency review. (1) Grantees and subgrantees shall make available, when asked by the awarding agency, technical specifications on proposed procurements where the awarding agency believes such review is needed to ensure that the item and/or service specified is the one being proposed for purchase. This review generally takes place prior to the time the specification is incorporated into a solicitation document. However, if the grantee or subgrantee desires to have the review accomplished after a solicitation has been developed, the awarding agency may still review the specifications. This kind of review is usually limited to the technical aspects of the proposed purchases.

(2) Grantees and subgrantees shall, on request, make available for awarding agency preaward review procurement documents, such as requests for proposals or invitations for bids, independent cost estimates, etc., when a grantee's or subgrantee's procurement procedures or operation fails to comply with the procurement standards in this section; and

(i) The procurement is expected to exceed \$25,000 and is to be awarded without competition or only one bid or offer is received in response to a solicitation; or

(ii) The procurement, which is expected to exceed \$25,000, specifies a "brand name" product; or

(iii) The proposed award over \$25,000 is to be awarded to other than the apparent low bidder under a sealed bid procurement; or

(iv) A proposed contract modification changes the scope of a contract or increases the contract amount by more than \$25,000.

(3) A grantee or subgrantee is exempt from the preaward review of this section if its procurement systems comply with the standards of this section.

(g) Bonding requirements. For construction or facility improvement contracts or subcontracts exceeding \$100,000, the awarding agency may accept the bonding policy and requirements of the grantee or subgrantee provided the awarding agency has made a determination that the awarding agency's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:

(1) A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying the bid as assurance that the bidder will, upon acceptance of its bid, execute such contractual documents as may be required within the time specified.

(2) A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(3) A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

(h) Contract Provisions. A grantee's and subgrantee's contracts must contain the provisions below. Agencies may require changes, remedies, changed conditions, access and records retention, suspension of work, and other clauses approved by the Office of Federal Procurement Policy.

(1) Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate (contracts other than small purchases);

(2) Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected

and the basis for settlement (all contracts in excess of \$10,000);

(3) Compliance with Executive Order 11246 of September 24, 1965 entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967 and as supplemented in Department of Labor regulations (41 CFR Part 60) (all construction contracts awarded in excess of \$10,000 by grantees and their contractors or subgrantees).

(4) Compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3) (all contracts and subgrants for construction or repair).

(5) Compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) as supplemented by Department of Labor regulations (29 CFR Part 5) (construction contracts in excess of \$2,000 awarded by grantees and subgrantees when required by Federal grant program legislation).

(6) Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5) (construction contracts awarded by grantees and subgrantees in excess of \$2,000, and in excess of \$2,500 for other contracts that involve the employment of mechanics or laborers).

(7) Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15) (contracts, subcontracts, and subgrants of amounts in excess of \$100,000).

(8) Notice of agency requirements and regulations pertaining to reporting.

(9) Notice of agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.

(10) Federal requirements and regulations pertaining to copyrights and rights in data.

(11) Access by the grantee, the subgrantee, [agency], the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit examination, excerpts, and transcriptions.

(12) Retention of all required records for three years after grantees or subgrantees

make final payments and all other pending matters are closed.

(13) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163).

Section _____.37 Subgrants.

(a) Responsibilities of grantees. Grantees shall:

(1) Ensure that every subgrant includes a provision for compliance with this part;

(2) Ensure that every subgrant includes any clauses required by Federal statute and executive orders and their implementing regulations; and

(3) Specify that subgrantees shall comply with requirements imposed upon them by Federal statutes and regulations.

(b) Exceptions. The requirements throughout this part that are imposed on subgrantees do not create any direct relationship between [agency] and a subgrantee, unless explicitly stated. By their own terms, certain provisions of this part do not apply to the award and administration of subgrants:

(1) Section _____.10;

(2) Section _____.11; and

(3) The letter-of-credit procedures specified in Treasury Regulations at 31 CFR Part 205, cited in Section _____.21;

Section _____.38 Intangible property and debt instruments.

Title to intangible property and debt instruments acquired under a grant or subgrant vests upon acquisition in the grantee or subgrantee respectively. While needed for the originally authorized purposes, the grantee or subgrantee shall use that property and shall not dispose of or encumber the intangible property and debt instruments or interests in the intangible property and debt instruments.

Section _____.39 Grant property trust relationship and notices.

Real property, equipment, and intangible property and debt instruments that are acquired or improved with Federal grant funds are held in trust by the grantee or subgrantee as trustee for the beneficiaries of the project or program under which the property was acquired or improved. [agency] may require nongovernmental grantees to place liens or other appropriate notices of

record to indicate that property has been acquired or improved with Federal grant funds.

Reports, Records, Retention, and Enforcement

Section ____-40 Monitoring and reporting program performance.

(a) Monitoring by grantees. Grantees are responsible for managing the operations of grant supported activities. Grantees must monitor grant supported activities to assure compliance with applicable Federal requirements and that performance goals are being achieved.

(b) Nonconstruction performance reports. If [agency] decides that performance information found in subsequent applications contains sufficient information to meet its programmatic needs, it may require the grantee to submit a performance report only upon expiration or termination of grant support. Unless waived by [agency] this report will be due on the same date as the final Financial Status Report.

(1) Grantees shall submit annual performance reports. Annual reports shall be due 90 days after the grant year. The final performance reports are due 90 days after the expiration or termination of grant support. If a grantee submits a request justifying the need for extension of the due date for any performance report [agency] may extend the due date for the report. In addition, [agency] may waive requirements for unnecessary performance reports.

(2) Performance reports must at a minimum contain, for each grant, brief information on the following:

(i) A comparison of actual accomplishments to the objectives established for the period. Where the output of the project can be quantified, a computation of the cost per unit of output may be required if that information will be useful.

(ii) The reasons for slippages if established objectives were not met.

(iii) Additional pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

(3) The [agency] shall not require grantees to submit more than the original and two copies of performance reports.

(4) Grantees shall adhere to the standards in this section in prescribing reporting requirements for subgrantees.

(c) Construction performance reports. For the most part, Federal agencies rely heavily on certified percentage-of-completion data and on-site technical inspection to monitor progress under construction grants and subgrants.

[Agency] may require additional formal performance reports only when considered necessary, but never more frequently than quarterly.

(d) Significant developments. Events may occur between the scheduled performance reporting dates which have significant impact upon the grant or subgrant supported activity. In such cases, the grantee shall inform [agency] of those developments.

(e) Site visits. [Agencies] may make site visits as warranted by program needs.

(f) Waivers, extensions. (1) [agencies] may waive any performance report required by this part if not needed.

(2) The grantee may waive any performance report from a subgrantee when not needed. The grantee may extend the due date for any performance report from a subgrantee if grantee is still able to meet its performance reporting obligations to [agency].

Section ____-41 Financial Reporting.

(a) General. (1) Except as provided in paragraphs (a)(2) and (5) of this section, grantees shall use only the forms specified in paragraphs (a) through (e) of this section, and such supplementary or other forms as may from time to time be authorized by OMB, for:

(i) Submitting financial reports to [agency], or

(ii) Requesting advances or reimbursements when letters of credit are not used.

(2) Grantees are not required to apply the forms prescribed in this section in dealing with their subgrantees. However, grantees shall not impose more burdensome requirements on subgrantees.

(3) Grantees shall follow all applicable standard and supplemental Federal agency instructions approved by OMB to the extent required under the Paperwork Reduction Act of 1980 for use in connection with forms specified in paragraphs (b) through (e) of this section. [agency] may issue substantive supplementary instructions only with the approval of OMB. [agency] may shade out or instruct the grantee to disregard any line item that [agency] finds unnecessary for its decisionmaking purposes.

(4) Grantees are not required to submit more than the original and two copies of forms required under this part.

(5) [agency] may provide computer outputs to grantees to expedite or contribute to the accuracy of reporting. [agency] may accept

the required information from grantees in machine usable format or computer printouts instead of prescribed forms.

(6) [agency] may waive any report required by this section if not needed.

(7) [agency] may extend the due date of any financial report upon receiving a justified request from a grantee.

(b) Financial Status Report. (1) Form. Grantees will use Standard Form 269 or 269A, Financial Status Report, to report the status of funds for all nonconstruction grants and for construction grants when required in accordance with paragraph (e)(2)(iii) of this section.

(2) Accounting basis. Each grantee shall report program outlays and program income on a cash or accrual basis as prescribed by the awarding agency. If [agency] requires accrual information and the grantee's accounting records are not normally kept on the accrual basis, the grantee shall not be required to convert its accounting system but shall develop such accrual information through an analysis of the documentation on hand.

(3) Frequency. [agency] may prescribe the frequency of the report for each project or program. However, the report will not be required more frequently than quarterly. If [agency] does not specify the frequency of the report, it shall be submitted annually. A final report shall be required upon expiration or termination of grant support.

(4) Due date. (i) When reports are required on a quarterly or semiannual basis, they are due 30 days after the reporting period.

(ii) When required on an annual basis, they are due 90 days after the grant year except for cases where the deadline for liquidation of obligations has been extended, as provided in Sections _____.23 and _____.50. In such instances, the report shall be due 90 days after the extended deadline.

(iii) Final reports are due 90 days after the expiration or termination of grant support.

(iv) The awarding agency may extend these deadlines at the request of the grantee.

(c) Federal Cash Transactions Report. (1) Form. (i) For grants paid by letter of credit, Treasury check advances of electronic funds transfer, the grantee shall submit the Standard Form 272, Federal Cash Transactions Report, and when necessary, its continuation sheet, Standard Form 272a, unless the terms of the award exempt the grantee from this requirement.

(ii) [agency] uses these reports to monitor cash advanced to grantees and to obtain from grantees disbursement or outlay information for each grant. The format of the report may be adapted as appropriate when reporting is to be accomplished with the assistance of automatic data processing equipment provided that the information to be submitted is not changed in substance.

(2) Forecasts of Federal cash requirements. Forecasts of Federal cash requirements may be provided in the "Remarks" section of the report.

(3) Cash in hands of subgrantees. When the [agency] considers such action necessary and feasible, it may require the grantees to report the amount of cash advances in excess of three days' needs in the hands of their subgrantees or contractors and to provide short narrative explanations of actions taken by the grantee to reduce the excess balances.

(4) Frequency and due date. Grantees shall submit the report no later than 15 working days following the end of each quarter. However, where an advance either by letter of credit or electronic funds transfer is authorized at an annualized rate of one million dollars or more, the [agency] may require the report to be submitted within 15 working days following the end of each month.

(d) Outlay report and request for reimbursement for construction programs. (1) When grants support construction activities paid by the reimbursement method:

(i) Requests for reimbursement under construction grants must be submitted on Standard Form 271, Outlay Report and Request for Reimbursement for Construction Programs. [agency] may, however, prescribe the Request for Advance or Reimbursement form, Standard Form 270.

(ii) The frequency for submitting reimbursement requests is treated in paragraph (b)(3) of this section.

(2) When grants that support construction activities paid by letter of credit, electronic funds transfer or Treasury check advance, the following applies:

(i) When a construction grant is paid by letter of credit, electronic funds transfer or Treasury check advances, the grantee shall report its outlays to the [agency] using Standard Form 271, Outlay Report and Request for Reimbursement for Construction Programs. [agency] shall provide any necessary special instruction. However, frequency and due date are governed by paragraphs (b)(3) and (4).

(ii) When a construction grant is paid by Treasury check advances based on periodic

requests from the grantee, the advances must be requested on Standard Form 270.

(iii) [agency] may substitute the Financial Status Report specified in paragraph (b) of this section for the Outlay Report and Request for Reimbursement for Construction Programs.

(3) Accounting basis. The accounting basis for the Outlay Report and Request for Reimbursement for Construction Programs are to be governed by paragraph (b)(2) of this section.

Section _____ .42 Retention and access requirements for records.

(a) Applicability. (1) This section applies to all financial and programmatic records, supporting documents, statistical records, and other records of grantees or subgrantees which are required to be maintained by the terms of this part.

(2) This section does not apply to records maintained by contractors or subcontractors. For a requirement to place a provision concerning records in certain kinds of contracts, see Section _____.36.

(b) Length of retention period. (1) Except as otherwise provided, records must be retained for three years from the starting date specified in paragraph (c) of this section.

(2) If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the 3-year period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular 3-year period, whichever is later.

(3) To avoid duplicate recordkeeping, awarding agencies may make special arrangements with grantees and subgrantees to retain any records which are continuously needed for joint use. The awarding agency shall request transfer of records to its custody when it determines that the records possess long-term retention value. When the records are transferred to or maintained by [agency] the 3-year retention requirement does not apply to grantee or subgrantee.

(c) Starting date of retention period. (1) General. When grant support is continued or renewed at annual intervals, the retention period for the records of each funding period starts on the day the grantee or subgrantee submits to the awarding agency its single or last expenditure report for that period. However, if grant support is continued or renewed quarterly, the retention period for each year's records starts on the day the grantee submits its expenditure report for the last quarter. In all other cases, the retention period starts on the day the grantee submits its final expenditure report. If an expenditure

report has been waived, the retention period starts on the day the report would have been due.

(2) Real property and equipment records. The retention period for real property and equipment records starts from the date of the disposition or replacement or transfer at the direction of the awarding agency.

(3) Records for income transactions after grant or subgrant support. In cases where grantees must report income after the period of grant support, the retention period for the records pertaining to the income earned during that period starts at the end of the grantee's fiscal year in which the income is earned.

(4) Indirect cost rate proposals, cost allocations plans, etc. This paragraph applies to the following types of documents, and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

(i) If submitted for negotiation. If the proposal, plan, or other computation must be submitted to [agency] to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts on the date of such submission.

(ii) If not submitted for negotiation. If the proposal, plan, or other computation is not required to be submitted to [agency] for negotiation purposes, then the 3-year retention period for the proposal plan, or computation and its supporting records starts at the end of the fiscal year (or other accounting period) covered by the proposal, plan or other computation.

(d) Substitution of microfilm. Copies made by microfilming, photocopying, or similar methods may be substituted for the original records.

(e) Access to records. (1) Records of grantees and subgrantees. The head of the awarding agency and the Comptroller General of the United States, or any of their authorized representatives has the right of access to any pertinent books, documents, papers, or other records of grantees and subgrantees which are pertinent to the grant in order to make audits, examinations, excerpts, and transcripts, subject to the provisions of OMB Circular A-133.

(2) Expiration of right of access. The rights of access in this section must not be limited to the required retention period but shall last as long as the records are retained.

(f) Restrictions on public access. The Federal Freedom of Information Act (5 U.S.C. 552) does not apply to records owned and possessed by the grantee. Unless required by

Federal, State, or local law, grantees and subgrantees are not required to permit public access to their records.

Section ____ .43 Enforcement.

(a) Remedies for noncompliance. If a grantee or subgrantee materially fails to comply with any term of an award, the awarding agency 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 grantee or subgrantee or more severe enforcement action by the awarding agency.

(2) Disallow (that is, deny both use of funds and 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 current award for the grantee's or subgrantee's program.

(4) Withhold further awards for the program, or

(5) Take other remedies that may be legally available.

(b) Hearings, appeals. In taking an enforcement action, the awarding agency shall provide the grantee or subgrantee an opportunity for such hearing, appeal, or other administrative proceeding to which the grantee or subgrantee is entitled under any statute or regulation applicable to the action involved.

(c) Effects of suspension and termination. Costs of a grantee or a subgrantee resulting from obligations incurred by the grantee or subgrantee during a suspension or after termination of an award are not allowable unless the awarding agency expressly authorizes them in the notice of suspension or termination or subsequently. Other grantee or subgrantee costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if:

(1) The costs result from obligations which were properly incurred by the grantee or subgrantee before the effective date of suspension or termination, are not in anticipation of it, and, in the case of a termination, are noncancellable, and,

(2) The costs would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.

(d) Relationship to Debarment and Suspension. The enforcement remedies identified in this section, including suspension and termination, do not preclude a grantee or

subgrantee from "Debarment and Suspension" under E.O. 12549 (see Section ____ .35).

Section ____ .44 Termination for convenience.

Except as provided in Section ____ .43 awards may be terminated in whole or in part only as follows:

(a) By the awarding agency with the consent of the grantee or subgrantee in which case the two parties shall agree upon the termination conditions, including the effective date and in the case of partial termination, the portion to be terminated; or

(b) By the grantee or subgrantee upon sending to the awarding agency written notification, setting forth the reasons for such termination, the effective date, and the portion to be terminated, in the case of partial termination. However, if the awarding agency determines in the case of partial termination that the remaining portion of the award will not accomplish the purposes for which the award was made, it may terminate the award in its entirety under either Section ____ .43 or paragraph (a) of this section.

Subpart D--After-The-Grant Requirements

Section ____ .50 Closeout.

(a) General. [agency] shall close out the award when it determines that all applicable administrative actions and all required work of the grant has been completed.

(b) Liquidation of obligations. (1) Grantee and Subgrantee shall liquidate all obligations incurred on the award not later than 90 days after the end of the funding period.

(2) [agency] may extend this deadline at the request of the grantee.

(c) Reports. Within 90 days after the expiration or termination of the grant, the grantee and subgrantee shall submit all financial, performance, and other reports required as a condition of the grant. Upon request by the grantee, [agencies] may extend this timeframe. These include:

(1) Final performance or progress report.

(2) Financial Status Report (SF 269) or Outlay Report and Request for Reimbursement for Construction Programs (SF-271) (as applicable).

(3) Final request for payment (SF-270) (if applicable).

(4) Invention disclosure (if applicable).

(5) Federally-owned property report (if applicable).

(d) Cost adjustment. Within 90 days after receipt of reports in paragraph (c) of this section, [agency] shall made required adjustments to the allowable costs.

(e) Cash adjustments. (1) [agency] shall make prompt payment to the grantee for allowable reimbursable costs.

(2) The grantee shall make prompt payment to [agency] of any balance of unobligated and/or unencumbered cash advanced that is not authorized to be retained for use on other grants.

Section _____.51 Later disallowances and adjustments.

The closeout of a grant does not affect:

(a) The right of [agency] to disallow costs and recover funds on the basis of a later audit or other review;

(b) The obligation of the grantee or subgrantee to return any funds due as a result of later refunds, corrections, or other transactions;

(c) Records retention as required in Section _____.42;

(d) Property management requirements in Sections _____.31 and _____.32; and

(e) Audit requirements in Section _
_.26.

Section _____.52 Collection of amounts due.

(a) Any funds paid to a grantee in excess of the amount to which the grantee is finally determined to be entitled under the terms of the award constitute a debt to the Federal Government. If not paid within a reasonable period after demand, the Federal agency may reduce the debt by:

(1) Making an administrative offset against another request for reimbursements,

(2) Withholding advance payments otherwise due to the grantee, or

(3) Other action permitted by law.

(b) Except where otherwise provided by statutes or regulations, the [agency] shall charge interest on an overdue debt in accordance with the Federal Claims Collection Standards (4 CFR Ch. II).