

Grant Terms and Conditions The Appraisal Subcommittee (ASC)

By accepting funds under this award, the recipient agrees to comply with these Terms and Conditions, the program-specific requirements described in the Notice of Funding Availability, and the applicable federal statutes, regulations and guidelines included here and on the Notice of Grant Award (NGA). The recipient agrees to operate the funded program in accordance with the approved application and budget, supporting documents, and other representations made in support of the approved application.

I. Governing Authorities

- A. Legislative and Regulatory Authority.** This award is authorized by and subject to Title XI of the Financial Institution Reform, Recovery and Enforcement Act (FIRREA), Title XI § 1109 (b)(5), 12 U.S.C. § 3338 and the Federal Grant and Cooperative Agreement Act (FGCAA), 31 U.S.C. § 6301-6308.

- B. Other Applicable Requirements and Regulations.** This award is subject to the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards located at 2 CFR Part 200 as noted on the NGA. Grantees must read, understand, and implement these federal regulations. The General Terms and Conditions below provide an overview of the requirements and cover other federal requirements, but do not substitute for fully understanding and implementing 2 CFR Part 200. See Attachment #1 for helpful guidance on these requirements.

II. General Terms and Conditions

A. Responsibilities under Award Administration

Accountability of the Recipient. The recipient has full fiscal and programmatic responsibility for managing all aspects of the award and award-supported activities, subject to the oversight of the ASC. The recipient is accountable to the ASC for its operation of the program and the use of ASC award funds. The recipient must expend award funds in a manner consistent with the Cost Principles in 2 CFR 200.400 and in a reasonable manner, and it must record accurately the activities and outcomes achieved under the award. Although recipients are encouraged to seek the advice and opinion of the ASC Grants Office on special problems that may arise, such advice does not diminish the recipient's responsibility for making sound judgments and does not shift the responsibility for operating decisions to the ASC.

B. Financial Management Standards

- 1. **General.** The recipient must maintain financial management systems that comply with 2 CFR Part 200.302(b). The recipient's financial management systems must be capable of distinguishing expenditures attributable to this award from expenditures

not attributable to this award. The systems must be able to identify costs by program year and by budget category, and to differentiate between direct and indirect costs. For all recipient's financial management requirements and responsibilities, refer to Subparts D and E of 2 CFR Part 200.

2. **Allowability of Costs.** To be allowable under an award, costs must meet the criteria of 2 CFR Part 200.403, which provides that costs must be necessary and reasonable for the performance of the award, must conform to limitations in the award or 2 CFR Part 200 as to types or amounts of cost items, must be consistent with policies and procedures that apply uniformly to both federally financed and other activities of the recipient, must be adequately documented, and must not be included as a cost or used to meet cost share or matching requirements of any other federally financed program.

C. Financial and Progress Reporting

Grant recipients will submit semi-annual progress and Federal Financial Reports (FFR) through the Payment Management System (PMS) at the U.S. Department of Health and Human Services. Grantees must establish accounts in the PMS system and ensure those accounts are kept up to date. Reports are due on November 15 for the period ending September 30 and April 15 for the period ending March 31.

D. Award Products

To the extent practicable, the recipient agrees to make products produced under the award available at the cost of reproduction to others in the field.

In addition, publications created with grant funds must acknowledge support by the ASC and include a disclaimer as follows:

“This material is supported by the Appraisal Subcommittee of the Federal Financial Institutions Examination Council under Grant No. _____. Opinions or points of view expressed in this document are those of the authors and do not necessarily reflect the official position of or a position that is endorsed by the Appraisal Subcommittee.”

III. Whistleblower Protection

This award and employees working on this award will be subject to the whistleblower rights and remedies in the contractor employee whistleblower protections established at 41 U.S.C. § 4712 by section 828 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239).

- A. An employee of a recipient may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing information that the employee reasonably believes is evidence of gross mismanagement of a federal contract or award, a gross waste of federal funds, an abuse of authority (an arbitrary and capricious exercise of authority that is inconsistent with the mission of the ASC or the successful performance of a contract or

award of the ASC) relating to a federal contract or award, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal contract (including the competition for or negotiation of a contract) or award.

- B.** The recipient shall inform its employees and contractors in writing, in the predominant language of the workforce or organization, of employee whistleblower rights and protections under 41 U.S.C. § 4712, as described above.

IV. Trafficking in Persons

This grant is subject to the requirements of section 106(g) of the Trafficking Victims Protection Act of 2000, as amended (22 U.S.C. § 7104) as follows:

- A.** Provisions applicable to a recipient that is a private entity. You as the recipient, your employees, subrecipients under this award, and subrecipients' employees may not:
 - 1. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
 - 2. Procure a commercial sex act during the period of time that the award is in effect; or
 - 3. Use forced labor in the performance of the award or subawards under the award.
- B.** We as the federal awarding agency may unilaterally terminate this award, without penalty, if you or a subrecipient that is a private entity:
 - 1. Violates a prohibition in section (IV)(A) of this award term; or
 - 2. Has an employee who violates a prohibition in section (IV)(A) of this award term through conduct that is either:
 - a. Associated with performance under this award; or
 - b. Imputed to you or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR Part 180, "OMB Guidelines to Agencies on Government-wide Debarment and Suspension (Nonprocurement)."
- C.** Provisions applicable to a recipient other than a private entity. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if a subrecipient that is not a private entity:
 - 1. Is determined to have violated an applicable prohibition of section (IV)(A) of this award term; or
 - 2. Has an employee who is determined by the agency official authorized to terminate

the award to have violated an applicable prohibition in section (IV)(A) of this award term through conduct that is:

- a. Associated with performance under this award; or
- b. Imputed to you using the standards and due process for imputing conduct of an individual to an organization that are provided in 2 CFR Part 180, “OMB Guidelines to Agencies on Government-wide Debarment and Suspension (Nonprocurement),” as implemented by our agency at 2 CFR Part 200.

D. Provisions applicable to any recipient.

1. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in section (IV)(A) of this award term.
2. Our right to terminate unilaterally that is described in section (IV)(C):
 - a. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. § 7104(g)), and
 - b. Is in addition to all other remedies for noncompliance that are available to us under this award.
3. You must include the requirements of section (IV)(A) of this award term in any subaward you make to a private entity.

E. Definitions. For purposes of this award term:

1. “Employee” means either:
 - a. An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or
 - b. Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.
2. “Forced labor” means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.
3. “Private entity” means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR Part 175.25. Includes:

- a. A nonprofit organization, including any non-profit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 CFR Part 175.25(b).
 - b. A for-profit organization.
4. “Severe forms of trafficking in persons,” “commercial sex act,” and “coercion” have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. § 7102).

V. Breaches of Personally Identifiable Information (PII)

All grantees need to be prepared for potential breaches of Personally Identifiable Information (PII). OMB defines PII as any information about an individual, including, but not limited to, education, financial transactions, medical history, and criminal or employment history and information which can be used to distinguish or trace an individual's identity, such as their name, social security number, date and place of birth, mother's maiden name, biometric records, etc., including any other personal information which is linked or linkable to an individual. (See 2 CFR § 200.79.) All recipients and subrecipients must ensure that they have procedures in place to prepare for and respond to breaches of PII and notify ASC in the event of a breach.

If your ASC grant-funded program or project creates, collects, uses, processes, stores, maintains, disseminates, discloses, or disposes of PII within the scope of the grant award, or uses or operates a federal information system, you must establish procedures to prepare for and respond to a potential breach of PII, including notice of a breach of PII to the ASC. State agency grantees should follow state policies and procedures for protecting PII. Grantees experiencing a breach should immediately notify the ASC's Grants Director.

VI. Transparency Act Requirements (for Grants and Cooperative Agreements of \$25,000 or More)

A. Reporting Subawards

1. **Applicability.** Unless you are exempt as provided in section (VI)(D), of this award term (below), you must report each action that obligates \$25,000 or more in federal funds for a subaward to an entity (see Definitions in section (VI)(E) of this award term).
2. **Where and When to Report**
 - a. You must report each obligating action described in section (VI)(A)(1) of this award term to <https://www.fsrs.gov>
 - b. For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2017, the obligation must be reported by no later than

December 31, 2017.)

3. **What to Report.** You must report the information about each obligating action that the submission instructions posted at <https://www.fsrs.gov> specify.

B. Reporting Total Compensation of Recipient Executives

1. **Applicability and What to Report.** You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if:
 - a. The total federal funding authorized to date under this award is \$25,000 or more;
 - b. In the preceding fiscal year, you received:
 - (1) 80 percent or more of your annual gross revenues from federal procurement contracts (and subcontracts) and federal financial assistance subject to the Transparency Act, as defined at 2 CFR Part 170.320 (and subawards); and
 - (2) \$25,000,000 or more in annual gross revenues from federal procurement contracts (and subcontracts) and federal financial assistance subject to the Transparency Act, as defined at 2 CFR Part 170.320 (and subawards); and
 - c. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. § 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Securities and Exchange Commission total compensation filings at <https://www.sec.gov/answers/excomp.htm>.)
2. **Where and When to Report.** You must report executive total compensation described in section (VI)(B) of this award term:
 - a. As part of your registration profile at <https://www.sam.gov/portal/public/SAM/>
 - b. By the end of the month following the month in which this award is made, and annually thereafter.

C. Reporting of Total Compensation of Subrecipient Executives

1. **Applicability and What to Report.** Unless you are exempt as provided in section (VI)(D) of this award term, for each first-tier subrecipient under this award, you shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if:
 - a. In the subrecipient's preceding fiscal year, the subrecipient received:

- (1) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and federal financial assistance subject to the Transparency Act, as defined at 2 CFR Part 170.320 (and subawards); and
 - (2) \$25,000,000 or more in annual gross revenues from federal procurement contracts (and subcontracts), and federal financial assistance subject to the Transparency Act, as defined at 2 CFR Part 170.320 (and subawards); and
- b. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. Part 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Securities and Exchange Commission total compensation filings at <https://www.sec.gov/answers/execomp.htm>.)
2. **Where and When to Report.** You must report subrecipient executive total compensation described in section (VI)(C)(1) of this award term:
- a. To the recipient.
 - b. By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (i.e., between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.

D. Exemptions. If, in the previous tax year, you had gross income, from all sources, under \$300,000, you are exempt from the requirements to report:

1. Subawards, and
2. The total compensation of the five most highly compensated executives of any subrecipient.

E. Definitions. For purposes of this award term:

1. **Entity** means all of the following, as defined in 2 CFR Part 25:
 - a. A governmental organization, which is a state, local government, or Indian tribe;
 - b. A foreign public entity;
 - c. A domestic or foreign nonprofit organization;
 - d. A domestic or foreign for-profit organization;
 - e. A federal agency, but only as a subrecipient under an award or subaward to a non-

federal entity.

2. **Executive** means officers, managing partners, or any other employees in management positions.
3. **Subaward**
 - a. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.
 - b. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see 2 CFR Part 200.330).
 - c. A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.
4. **Subrecipient** means an entity that:
 - a. Receives a subaward from you (the recipient) under this award; and
 - b. Is accountable to you for the use of the federal funds provided by the subaward.
5. **Total compensation** means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 CFR Part 229.402(c)(2)):
 - a. Salary and bonus
 - b. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
 - c. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives and are available generally to all salaried employees.
 - d. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
 - e. Above-market earnings on deferred compensation which is not tax-qualified.
 - f. Other compensation, if the aggregate value of all such other compensation (e.g.

severance, life insurance) for the executive exceeds \$10,000.

ASC Guidance on Key Provisions in 2 CFR § 200

Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards

Background. Prior to the consolidated OMB Guidance in 2 CFR § 200, OMB had issued separate Circulars which provided grant guidance to each type of recipient of federal grants—States, Higher Education Nonprofits and other Nonprofits.

While these consolidated provisions in 2 CFR § 200 Parts 200.1 through .520 and Appendices I through XII combined many separate common provisions into one section, some sections still have significant differences in requirements for States, higher education institutions and nonprofits. So, new federal grantees or those with limited experience with federal grants, should exercise caution in reading the various applicable grant provisions to assure they are discerning the distinctions among different types of grantees (States, higher education institutions, nonprofits).

The following address a few of the common aspects of our federal grants to States that should be noted, particularly for State agencies new to federal grants:

1. **Salary and Wages** (2 CFR § 200.430). Compensation-personal services addresses at length the requirements for reasonable compensation, charging staff time to the federal grant award and the various means of accumulating time-keeping records and documentation of such effort. There are substantive differences in this section among the State, higher education institutions and nonprofit requirements. Note these specific stipulations applicable to State grantees:

- Charges to the grant must be based on records that accurately reflect the work performed and are consistent with policies and internal controls
- Unless 100% working on the grant, documentation must account for total activity, federal and nonfederal, for which employee is compensated.
- Budget estimates cannot be used to document time spent on the grant.
- Salaries and wages for employees used as match must meet the same standard.
- For State agencies (and local governments), substitute processes or systems may be used if approved by their cognizant federal agency.

Greater detail is contained in 200.430.

2. Equipment and other Capital Expenditures (2 CFR § 200.313)

- These expenditures under a grant give conditional title to the states, but the federal agency still maintains an interest.
- State grantees must use, manage and dispose of equipment and other capital expenditures in accordance with state law and procedures, which should address controls, inventory, maintenance, etc.

3. Financial Management (2 CFR § 200.302). States must:

- Expend and account for the federal award in accordance with state law and procedures for the state's own funds.
- Maintain records that are sufficient to report compliance with statute and terms of performance of the grant and to trace funds to assure expenditures have been used per the terms of the grant.

4. Indirect Costs (2 CFR § 200.414). State agencies:

- May use an indirect rate already negotiated with a federal agency.
- May develop and submit an indirect rate to be established.
- May use an indirect rate already negotiated with a federal agency

- May develop and submit an indirect rate to be established
- May apply a de minimis 10% indirect rate to Modified Total Direct Costs, IF they are receiving under \$35 million in federal funds and have never received an indirect cost rate. In this case, Modified Total Direct Costs (MTDC) are all salaries, wages, fringes, materials and supplies, subawards up to the first \$25,000. MTDC excludes equipment, capital expenditures, etc. (The 10% de minimis is the easiest and simplest route for most State agencies without an indirect cost rate).

5. Program Income (2 CFR § 200.80). Program Income is revenue earned as a direct result of the activity supported under the grant award.

- If approved by the ASC, it may be used to:
 - 1) Meet match if match is required by the award
 - 2) May be added to the total project activities
 - 3) May be deducted from the federal grant funding
- The ASC retains the right to negotiate use of program income earned after the period of performance.

4. Procurement by States (2 CFR § 200.317)

- When buying property and services under a federal award, State agencies must use the same policies and procedures they use for other non-federal funds.
- State standards should address such procurement concepts as competition, methods of procurement, written standards of conduct for involved staff, conflicts of interest, types of contract, small business, suspension and debarment, etc.

Considerations for State Agencies New to Federal Grants

Federal grants have extensive requirements for both performance and financial standards. Failure to meet these standards can often result in after-the-fact audit determinations disallowing incurred expenditures that are not supported by adequate documentation. This puts the agency in the difficult position of returning federal funds.

State agencies lacking grant expertise would be wise to coordinate their processes and procedures with State agencies that have extensive federal grant experience (*e.g.*, state education, transportation, or environment agencies) even using their systems where appropriate. For example, if purchasing equipment, the other agency would have all the necessary coding, tracking, controls, management, inventory and disposition processes in place for an equipment management system. It may be a simpler solution to use the other agency's system (with a unique identifier) instead of setting up an equipment management system for only a few purchases.

Likewise, many State agencies have mastered the timekeeping systems and efforts required to capture the data to support the charges of staff to the federal grant, which can sometimes be a difficult process for timekeeping and payrolls if the system is not set up to accumulate the necessary documentation. Such processes can be adopted or incorporated into an agency's timekeeping and payroll systems.

A knowledgeable mentor from an experienced State agency receiving federal grants might help alleviate the difficulty in learning, understanding and operating a new federal grant within the guidelines and minimize potential negative outcomes.