BONNEVILLE FINANCIAL ASSISTANCE INSTRUCTIONS

Issued by the Head of the Contracting Activity
Bonneville Power Administration

August 1, 2026

TABLE OF CONTENTS

Part 1—Information, Acronyms and Definitions 10
1.00 Information 10
1.01 Authority 10
1.02 Objective 10
1.03 Scope 10
1.04 Publication of the BFAI 11
1.05 Organization of the BFAI 11
1.06 Deviations from the BFAI 11
1.07 Categories of financial assistance 11
1.08 Standards of conduct 11
1.09 Definitions 11
Part 2—General Provisions 24
2.100 Purpose 24
2.101 [Reserved] 24
2.102 [Reserved] 24
2.103 [Reserved] 24
2.104 [Reserved] 24
2.105 [Reserved] 24
2.106 [Reserved] 24
2.107 [Reserved] 24
2.108 [Reserved] 24
2.109 [Reserved] 24
2.110 [Reserved] 24
2.111 [Reserved] 24
2.112 Conflict of Interest 25
2.113 Mandatory disclosures 25
Part 3—Pre-BPA Award Requirements and Contents of BPA Awards 26
3.200 [Reserved] 26
3.201 Use of grants and cooperative agreements 26
3.202 [Reserved] 26
3.203 Announcement of availability of funding opportunity 26
3.204 BPA review of merit of proposals 27
3.205 BPA review of risk posed by applicants 27
3.206 Standard application requirements 28

3.207 Specific conditions 28
3.208 Certifications and representations 28
3.209 Pre-award costs 28
3.210 Information contained in a financial assistance award 29
3.211 Micro-grants 29
3.212 [Reserved] 30
3.213 Suspension and debarment 30
Part 4—Post BPA Award Requirements 31
STANDARDS FOR FINANCIAL AND PROGRAM MANAGEMENT 31
4.300 Statutory requirements 31
4.301 [Reserved] 31
4.302 Financial management 31
4.303 Internal controls 31
4.304 Bonds 32
4.305 Payment 32
4.306 Cost sharing or matching 34
4.307 Program income 35
4.308 Revision of budget and program plans 36
4.309 Period of performance 37
PROPERTY STANDARDS 38
4.310 Insurance coverage 38
4.311 Real property 38
4.312 Federally-owned and exempt property 38
4.313 Equipment 39
4.314 Supplies 40
4.315 Intangible property 41
4.316 Property trust relationship 42
PROCUREMENT STANDARDS 43
4.317 Procurements by states 43
4.318 General procurement standards 43
4.319 [Reserved] 44
4.320 [Reserved] 44
4.321 Contracting with small business, disadvantaged small businesses, woman-owned small business, veteran-owned small business, and disabled veteran-owned small businesses 44
4.322 Procurement of recovered materials 45
4.323 [Reserved] 45
4.324 BPA or the pass-through entity review 45

4.325 [Reserved] 45
4.326 Contract provisions 45
PERFORMANCE AND FINANCIAL MONITORING AND REPORTING....46
4.327 Financial reporting 46
4.328 Monitoring and reporting program performance 46
4.329 Reporting on real property 47
SUBRECIPIENT MONITORING AND MANAGEMENT 47
4.330 Subrecipient and contractor determinations 47
4.331 Requirements for the pass-through entities....48
4.332 Fixed amount subawards....49
RECORD RETENTION AND ACCESS....49
4.333 Retention requirements for records....49
4.334 Requests for transfer of records....50
4.335 Methods for collection, transmission and storage of information 50
4.336 Access to records 50
4.337 Restrictions on public access to records 51
REMEDIES FOR NONCOMPLIANCE 51
4.338 Remedies for noncompliance....51
4.339 Termination....51
4.340 Notification of termination requirement....52
4.341 Opportunities to object, hearings and appeals 52
4.342 Effects of suspension and termination 52
CLOSEOUT....52
4.343 Closeout 52
CONTINUING FINANCIAL RESPONSIBILITIES 54
4.344 Continuing financial responsibilities 54
COLLECTION OF AMOUNTS DUE....54
4.345 Collection of amounts due 54
Part 5—Cost Principles.... 55
GENERAL PROVISIONS 55
5.400 Policy guide 55
5.401 Application 55
BASIC CONSIDERATIONS....56
5.402 Composition of costs....56
5.403 Factors affecting allowability of costs 56
5.404 Reasonable costs 56

5.405 Allocable costs....57
5.406 Applicable credits....57
5.407 Prior written approval (prior approval)....58
5.408 Limitation on allowance of costs....59
5.409 Special considerations....59
5.410 Collection of unallowable costs....59
5.411 [Reserved]....59
DIRECT AND INDIRECT (F&A) COSTS....60
5.412 Classification of costs....60
5.413 Direct costs....60
5.414 Indirect (F&A) costs....61
5.415 Required certifications....62
SPECIAL CONSIDERATIONS FOR STATES, LOCAL GOVERNMENT AND INDIAN TRIBES....62
5.416 Cost allocation plans and indirect cost proposals....62
5.417 Interagency service....63
SPECIAL CONSIDERATIONS FOR INSTITUTIONS OF HIGHER EDUCATION....63
5.418 Costs incurred by states and local governments....63
5.419 Cost accounting standards....63
GENERAL PROVISIONS FOR SELECTED ITEMS OF COST....63
5.420 Considerations for selected items of cost....63
5.421 Advertising and public relations....64
5.422 Advisory councils....64
5.423 Alcoholic beverages....65
5.424 Alumni/ae activities....65
5.425 Audit services....65
5.426 Bad debts....65
5.427 Bonding costs....65
5.428 Collections of improper payments....66
5.429 Commencement and convocation costs....66
5.430 Compensation—personal services....66
5.431 Compensation—fringe benefits....70
5.432 Conferences....74
5.433 Contingency provisions....74
5.434 Contributions and donations....75
5.435 Defense and prosecution of criminal and civil proceedings, claims, appeals and patent infringements....76
5.436 Depreciation....77

5.437 Employee health and welfare costs....79
5.438 Entertainment costs....79
5.439 Equipment and other capital expenditures....79
5.440 Exchange rates....79
5.441 Fines, penalties, damages and other settlements....80
5.442 Fund raising and investment management costs....80
5.443 Gains and losses on disposition of depreciable assets....80
5.444 General costs of government....81
5.445 Goods or services for personal use....81
5.446 Idle facilities and idle capacity....81
5.447 Insurance and indemnification....82
5.448 Intellectual property....84
5.449 Interest....84
5.450 Lobbying....86
5.451 Losses on other awards or contracts....88
5.452 Maintenance and repair costs....88
5.453 Materials and supplies costs, including costs of computing devices....88
5.454 Memberships, subscriptions, and professional activity costs....89
5.455 Organization costs....89
5.456 Participant support costs....89
5.457 Plant and security costs....89
5.458 Pre-award costs....89
5.459 Professional service costs....89
5.460 Proposal costs....90
5.461 Publication and printing costs....90
5.462 Rearrangement and reconversion costs....90
5.463 Recruiting costs....91
5.464 Relocation costs of employees....91
5.465 Rental costs of real property and equipment....92
5.466 Scholarships and student aid costs....93
5.467 Selling and marketing costs....93
5.468 Specialized service facilities....93
5.469 Student activity costs....94
5.470 Taxes (including Value Added Tax)....94
5.471 Termination costs....95
5.472 Training and education costs....96

5.473 Transportation costs 96
5.474 Travel costs 96
5.475 Trustees....97
Part 6—Audit Requirements 98
GENERAL 98
6.500 [Reserved] 98
AUDITS 98
6.501 Audit requirements....98
6.502 Basis for determining financial assistance awards expended....99
6.503 Relation to other audit requirements 99
6.504 Frequency of audits 100
6.505 Sanctions....100
6.506 Audit costs 100
6.507 Program-specific audits 100
AUDITEES 102
6.508 Auditee responsibilities 102
6.509 Auditor selection 102
6.510 Financial statements....103
6.511 Audit findings follow-up 103
6.512 Report submission 104
FEDERAL AGENCIES....106
6.513 [Reserved] 106
AUDITORS....106
6.514 Scope of audit....106
6.515 Audit reporting 107
6.516 Audit findings 108
6.517 Audit documentation 110
6.518 Major program 110
6.519 Criteria for BPA program risk 111
6.520 Criteria for a low-risk auditee 112
MANAGEMENT DECISIONS 113
6.521 Management decision....113
Part 7 — Clauses 114
UNIT 1 – GENERAL CLAUSES....114
CLAUSE 1 REGULATIONS APPLICABLE TO BPA FINANCIAL ASSISTANCE....114
CLAUSE 2 LEGAL AUTHORITY AND EFFECT 114

CLAUSE 3 NON-ASSIGNABILITY....114
CLAUSE 4 COMPLIANCE WITH FEDERAL, STATE, AND MUNICIPAL LAW....114
CLAUSE 5 INCONSISTENCY WITH FEDERAL LAW....114
CLAUSE 6 BLANKET FINANCIAL ASSISTANCE AGREEMENT....114
CLAUSE 7 CONTRACTING OFFICER'S REPRESENTATIVE....115
CLAUSE 8 FIELD REPRESENTATIVE....115
CLAUSE 9 CHANGE OR ABSENCE OF THE PRINCIPAL INVESTIGATOR OR DESIGNATED KEY PERSONNEL....115
CLAUSE 10 FEDERAL STEWARDSHIP....115
CLAUSE 11 SUBSTANTIAL INVOLVEMENT....116
CLAUSE 12 NONDISCLOSURE AND CONFIDENTIALITY AGREEMENTS ASSURANCES....117
CLAUSE 13 FOREIGN WORK AND TRAVEL....117
CLAUSE 14 PURCHASES....118
CLAUSE 15 LOBBYING RESTRICTIONS....118
CLAUSE 16 EXPORT CONTROLS....118
CLAUSE 17 PUBLICATIONS....118
CLAUSE 18 EXTENSIONS OF PERIOD OF PERFORMANCE....119
CLAUSE 19 PROPERTY TRUST RELATIONSHIP AND INSURANCE COVERAGE....119
CLAUSE 20 BPA FURNISHED EQUIPMENT OR MATERIAL....119
CLAUSE 21 PROPERTY – SUPPLIES AND EQUIPMENT....119
CLAUSE 22 TITLE TO AND DISPOSITION OF PROPERTY....120
CLAUSE 23 RECORD RETENTION....120
CLAUSE 24 AUDITS....121
CLAUSE 25 SUSPENSION OR TERMINATION....121
CLAUSE 26 CLAIMS, DISPUTES, AND APPEALS....122
UNIT 2 – FINANCIAL AND REPORTING CLAUSES....124
CLAUSE 27 REPORTING PROGRAM PERFORMANCE....124
CLAUSE 28 COST SHARING....124
CLAUSE 29 PAYMENT REQUESTS....125
CLAUSE 30 ADVANCE PAYMENT AND FINANCIAL REPORTING REQUIREMENTS....125
CLAUSE 31 REIMBURSEMENT PAYMENT AND FINANCIAL REPORTING REQUIREMENTS....126
CLAUSE 32 BUDGET CHANGES....126
CLAUSE 33 INCREMENTAL FUNDING....127
CLAUSE 34 INSOLVENCY, BANKRUPTCY OR RECEIVERSHIP....127
UNIT 3 – OTHER CLAUSES....128
CLAUSE 35 NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS....128
CLAUSE 36 ENVIRONMENTAL PROTECTION....128

CLAUSE 37 ENDANGERED SPECIES ACT REQUIREMENTS....128
CLAUSE 38 NEPA REQUIREMENTS....129
CLAUSE 39 FELONY CONVICTION AND FEDERAL TAX LIABILITY ASSURANCES....129
CLAUSE 40 DRUG–FREE WORKPLACE REQUIREMENTS FOR FINANCIAL ASSISTANCE AWARDS....129
CLAUSE 41 INTANGIBLE PROPERTY....130
CLAUSE 42 RIGHTS IN DATA....130
CLAUSE 43 INDEMNITY....131
CLAUSE 44 ENVIRONMENTAL, SAFETY, AND HEALTH....131
CLAUSE 45 SMALL UNMANNED AIRCRAFT (UAS)....131
CLAUSE 46 CLOSEOUT....131
CLAUSE 47 NATIONAL HISTORIC PRESERVATION ACT REQUIREMENTS....132
CLAUSE 48 [Reserved]....133
CLAUSE 49 [Reserved]....133
CLAUSE 50 BUY AMERICA REQUIREMENT FOR INFRASTRUCTURE PROJECTS....133
UNIT 4 – STATUTORY AND NATIONAL POLICY REQUIREMENTS....137
UNIT 5 – PROJECT DESCRIPTION....147
UNIT 6 – PROJECT BUDGET....148
Part 8—Forms....149
Appendices....150
Appendix I—Full Text of Announcement of Availability of Funding Opportunity....150
A. Program Description—Required....150
B. Financial assistance award Information—Required....150
C. Eligibility Information....151
D. Application and Submission Information....152
E. Application Review Information....153
F. Financial assistance award Administration Information....154
G. Agency Contact(s)—Required....155
H. Other Information—Optional....155
Appendix II—Contract Provisions for Recipient Contracts Under Financial Assistance Awards....157
Appendix III—Reserved (Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Institutions of Higher Education (IHEs))....159
Appendix IV—Reserved (Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Nonprofit Organizations)....160
Appendix V—Reserved (State/Local Government and Indian Tribe-wide Central Service Cost Allocation Plans)....161
Appendix VI—Reserved (Public Assistance Cost Allocation Plans)....162

Appendix VII—Reserved (States and Local Government and Indian Tribe Indirect Cost Proposals) 163
Appendix VIII—Nonprofit Organizations Exempted From Part E—Cost Principles 164
Appendix IX—Reserved (Hospital Cost Principles) 166
Appendix X—Data Collection Form (Form SF-SAC) 167
Appendix XI—Compliance Supplement 168
Appendix XII—Reserved (Award Term and Condition for Recipient Integrity and Performance Matters) 169

PART 1—INFORMATION, ACRONYMS AND DEFINITIONS

1.00 Information

The Bonneville Power Administration (BPA) was established by Congress as a regional utility. It provides low rates consistent with sound business principles in an environmentally responsible manner. BPA is a self-financing federal entity whose activities are funded primarily through revenues derived from the sale of electric power and transmission services pursuant to its statutory authority, rather than through annual appropriations of taxpayer funds.

The Bonneville Financial Assistance Instructions (BFAI) govern the awarding and administration of financial assistance instruments, including grants and cooperative agreements.

For guidance governing BPA's purchase of goods and services, refer to the Bonneville Purchasing Instructions (BPI).

1.01 Authority

BPA conducts its financial assistance (awarding grants and cooperative agreements) under the Bonneville Financial Assistance Instructions (BFAI) rather than 2 CFR 200. Financial assistance awards issued by BPA are funded by ratepayer revenues rather than congressionally appropriated taxpayer funds. Accordingly, BPA administers its financial assistance under its statutory authorities.

BPA's authority to enter into financial assistance instruments is derived from the Bonneville Project Act, 16 U.S.C. § 832 et. seq, the Pacific Northwest Electric Power Planning and Conservation Act, 16 U.S.C. § 839 et. seq and the Transmission System Act, and the Federal Columbia River Transmission System Act, 16 U.S.C. 838k(a).

The Head of the Contracting Activity (HCA) prescribes policies and procedures in accordance with responsibilities consistent with the delegations of authority delegated by the BPA Administrator.

1.02 Objective

The purpose of the BFAI is to establish policy and procedural requirements for BPA's financial assistance awards and administration, ensuring consistency, accountability, and alignment with BPA's statutory mission and operational model.

To promote sound stewardship and consistency with federal best practices, BPA may incorporate selected principles from 2 CFR 200 where appropriate.

1.03 Scope

The BFAI applies to all financial assistance instruments awarded by BPA, including grants and cooperative agreements.

The BFAI does not apply to:

- Contracts or agreements issued under the Bonneville Purchasing Instructions (BPI) for the acquisition of goods or services;
- Transmission and power marketing contracts; or,
- Real property transactions, including land acquisitions.

1.04 Publication of the BFAI

The BFAI is not published in the Federal Register. The decision not to publish was made on the basis of BPA's status as a regional entity. However, a notice announcing the availability of the BFAI is placed in the Federal Register annually.

1.05 Organization of the BFAI

(a) Contents: The BFAI contains the policies and procedures which are appropriate for all BPA financial assistance solicitations, grants, micro-grants and cooperative agreements.

(b) Target audience: The BFAI is intended as a ready reference for:
(1) BPA's financial assistance professionals;
(2) BPA's financial assistance requisitioners and program personnel; and
(3) Organizations that seek or receive financial assistance from BPA.

1.06 Deviations from the BFAI

Requests for deviations from mandatory requirements (i.e., clauses) of the BFAI, (those indicated by the words "shall" or "shall not") shall be submitted in writing to the Head of the Contracting Activity (HCA) for review and a final determination. Deviations from mandatory requirements, if approved by the HCA, must be incorporated by full text.

Deviations must be approved by the HCA. The contracting officer shall document the justification and HCA approval in the contract file.

Any deviations shall be reviewed and receive concurrence from the Director of Contracts and Strategic Sourcing or his/her acting Tier 4 Manager prior to seeking Head of the Contracting Activity approval.

1.07 Categories of financial assistance

In general, the major categories of assistance awards fall under BPA's statutes regarding energy, environment, and fish and wildlife. Education programs may include conference sponsorship, science competitions, science camps, exhibits, and annual events. Subject areas may include generation and transmission of energy, conservation, environment, and research and development.

1.08 Standards of conduct

BPA employees, recipients and employees of recipients are required to follow established conflict of interest and professional ethics policies at all times in order to avoid the appearance of conflict of interest, favoritism, or other improper behavior.

1.09 Definitions

(a) Terms defined here are used throughout the BFAI, and may differ from those used within panels of the Enterprise Resource Planning (ERP) system used by BPA. These definitions can be supplemented by additional instructional information provided in governmentwide standard information collections.

(b) Different definitions may be found in Federal statutes or regulations that apply more specifically to particular programs or activities.

Acquisition cost means the cost of the asset including the cost to ready the asset for its intended use. Acquisition cost for equipment, for example, means the net invoice price of the equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Acquisition costs for software includes those development costs capitalized in accordance with generally accepted accounting principles (GAAP). Ancillary charges, such as taxes, duty, protective in transit insurance, freight, and installation may be included in or excluded from the acquisition cost in accordance with the recipient's regular accounting practices.

Advance payment means a payment that a Federal awarding agency or the pass-through entity makes by any appropriate payment mechanism, including a predetermined payment schedule, before the recipient disburses the funds for program purposes.

Allocation means the process of assigning a cost, or a group of costs, to one or more cost objective(s), in reasonable proportion to the benefit provided or other equitable relationship. The process may entail assigning a cost(s) directly to a final cost objective or through one or more intermediate cost objectives.

Announcement of availability of funding opportunity means notification by BPA of specific funding opportunities.

Audit finding means deficiencies which the auditor is required by 6.516 Audit findings, paragraph (a) to report in the schedule of findings and questioned costs.

Auditee means any recipient that expends BPA awards which must be audited under Part 6 – Audit Requirements.

Auditor means an auditor who is a public accountant or a Federal, state, local government, or Indian tribe audit organization, which meets the general standards specified for external auditors in generally accepted government auditing standards (GAGAS). The term auditor does not include internal auditors of nonprofit organizations.

Budget means the financial plan for the project or program that BPA or the pass-through entity approves during the BPA award process or in subsequent amendments to the BPA award. It may include the BPA and non-BPA share or only the BPA share, as determined by BPA or the pass-through entity.

BPA means the Bonneville Power Administration.

BPA share means the portion of the total project costs that are paid by BPA funds.

BPI means the Bonneville Purchasing Instructions.

Capital assets means tangible or intangible assets used in operations having a useful life of more than one year which are capitalized in accordance with GAAP. Capital assets include:

(a) Land, buildings (facilities), equipment, and intellectual property (including software) whether acquired by purchase, construction, manufacture, lease-purchase, exchange, or through capital leases; and

(b) Additions, improvements, modifications, replacements, rearrangements, reinstallations, renovations or alterations to capital assets that materially increase their value or useful life (not ordinary repairs and maintenance).

Capital expenditures means expenditures to acquire capital assets or expenditures to make additions, improvements, modifications, replacements, rearrangements, reinstallations, renovations, or alterations to capital assets that materially increase their value or useful life.

Central service cost allocation plan means the documentation identifying, accumulating, and allocating or developing billing rates based on the allowable costs of services provided by a state, local government, or Indian tribe on a centralized basis to its departments and agencies. The costs of these services may be allocated or billed to users.

Catalog of Federal Domestic Assistance (CFDA) is now called Assistance Listings and provides a full listing of all Federal programs available to State and local governments (including the District of Columbia); federally-recognized Indian tribal governments; Territories (and possessions) of the United States; domestic public, quasi-public, and private profit and nonprofit organizations and institutions; specialized groups; and individuals. *(Note: BPA does not utilize CFDA numbers)*

Claim means, depending on the context, either:

(a) A written demand or written assertion by one of the parties to a BPA award seeking as a matter of right:
    (1) The payment of money in a sum certain;
    (2) The adjustment or interpretation of the terms and conditions of the BPA award; or
    (3) Other relief arising under or relating to a BPA award.

(b) A request for payment that is not in dispute when submitted.

Closeout means the process by which BPA or the pass-through entity determines that all applicable administrative actions and all required work of the BPA award have been completed and takes actions as described in 4.343 Closeout.

Cognizant agency for audit means the Federal agency designated to carry out the audit responsibilities. The cognizant agency for audit is not necessarily the same as the cognizant agency for indirect costs.

Cognizant agency for indirect costs means the Federal agency responsible for reviewing, negotiating, and approving cost allocation plans or indirect cost proposals. The cognizant agency for indirect cost is not necessarily the same as the cognizant agency for audit.

Computing devices means machines used to acquire, store, analyze, process, and publish data and other information electronically, including accessories (or “peripherals”) for printing, transmitting and receiving, or storing electronic information. See also Supplies and Information technology systems.

Compliance supplement means Appendix XI—Compliance Supplement (previously known as the Circular A-133 Compliance Supplement).

Contract means a legal instrument by which a recipient purchases property or services needed to carry out the project or program under a BPA award. The term as used in this part does not include a legal instrument, even if the recipient considers it a contract, when the substance of the transaction meets the definition of a BPA award or subaward.

Contract Specialist (CS) is a person assigned to represent the Contracting Officer on administrative matters within the limits of their authority by the Contracting Officer.

Contracting Officer (CO) means an individual with delegated authority by the HCA to enter into, administer, and/or terminate financial assistance agreements and make related determinations and findings.

Contracting Officer's Representative (COR) means an individual designated and authorized in writing by the Contracting Officer to perform specific technical and/or administrative functions, and who has been formally trained and certified at BPA to perform such duties.

Contractor means an entity that receives a contract.

Cooperative agreement means a legal instrument of financial assistance between a Federal awarding agency or the pass-through entity and a recipient that, consistent with 31 U.S.C. 6302-6305:

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

(b) The term cooperative agreement may be used interchangeably with the word contract; therefore, it is imperative that the Contracting Officer read the context around the policy.

(c) Is distinguished from a grant in that it provides for substantial involvement between BPA or the pass-through entity and the recipient in carrying out the activity contemplated by the BPA award.

(d) The term does not include:
    (1) A cooperative research and development agreement as defined in 15 U.S.C. 3710a; or
    (2) An agreement that provides only:
        (i) Direct United States Government cash assistance to an individual;
        (ii) A subsidy;
        (iii) A loan;
        (iv) A loan guarantee; or
        (v) Insurance.

Cooperative audit resolution means the use of audit follow-up techniques which promote prompt corrective action by improving communication, fostering collaboration, promoting trust, and developing an understanding between the Federal agency and the recipient. This approach is based upon:

(a) A strong commitment by Federal agency and recipient leadership to program integrity;

(b) Federal agencies strengthening partnerships and working cooperatively with recipients and their auditors; and recipients and their auditors working cooperatively with Federal agencies;

(c) A focus on current conditions and corrective action going forward;

(d) Federal agencies offering appropriate relief for past noncompliance when audits show prompt corrective action has occurred; and

(e) Federal agency leadership sending a clear message that continued failure to correct conditions identified by audits which are likely to cause improper payments, fraud, waste, or abuse is unacceptable and will result in sanctions.

Corrective action means action taken by the auditee that:

(a) Corrects identified deficiencies;

(b) Produces recommended improvements; or

(c) Demonstrates that audit findings are either invalid or do not warrant auditee action.

Cost allocation plan means central service cost allocation plan or public assistance cost allocation plan.

Cost objective means a program, function, activity, award, organizational subdivision, contract, or work unit for which cost data are desired and for which provision is made to accumulate and measure the cost of processes, products, jobs, capital projects, etc. A cost objective may be a major function of the recipient, a particular service or project, a BPA award, or an indirect (Facilities & Administrative (F&A)) cost activity, as described in Part 5—Cost Principles.

Cost-reimbursement means a type of contract or award that provides for payment of allowable incurred costs, to the extent prescribed in the financial assistance award. Cost reimbursement establishes an estimate of total cost for the purpose of obligating funds and establishing a ceiling that the contractor may not exceed (except at its own risk) without the approval of the Contracting Officer.

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

Cross-cutting audit finding means an audit finding where the same underlying condition or issue affects Federal awards of more than one Federal awarding agency or the pass-through entity.

Disallowed costs means those charges to a BPA award that BPA or the pass-through entity determines to be unallowable, in accordance with the applicable Federal statutes, regulations, or the terms and conditions of the BPA award.

Equipment means tangible personal property (including information technology systems) having a useful life of more than one year and a per-unit acquisition cost which equals or exceeds the lesser of the capitalization level established by the recipient for financial statement purposes, or $10,000. See also the definitions of capital assets, computing devices, general purpose equipment, information technology systems, special purpose equipment, supplies and property.

Expenditures means charges made by a recipient to a project or program for which a BPA award was received.

(a) The charges may be reported on a cash or accrual basis, as long as the methodology is disclosed and is consistently applied.

(b) For reports prepared on a cash basis, expenditures are the sum of:
    (1) Cash disbursements for direct charges for property and services;
    (2) The amount of indirect expense charged;
    (3) The value of third-party in-kind contributions applied; and
    (4) The amount of cash advance payments and payments made to subrecipients.

(c) For reports prepared on an accrual basis, expenditures are the sum of:
    (1) Cash disbursements for direct charges for property and services;
    (2) The amount of indirect expense incurred;
    (3) The value of third-party in-kind contributions applied; and
    (4) The net increase or decrease in the amounts owed by the recipient for:
        (i) Goods and other property received;
        (ii) Services performed by employees, contractors, subrecipients, and other payees; and

(iii) Programs for which no current services or performance are required such as annuities, insurance claims, or other benefit payments.

Federal agency means an “agency” as defined at 5 U.S.C. 551(1) and further clarified by 5 U.S.C. 552(f).

FAC means the clearinghouse designated by OMB as the repository of record where recipients are required to transmit the reporting packages required by Part 6—Audit Requirements.

Federal awarding agency means the Federal agency that provides a Federal award directly to a recipient.

BPA award has the meaning, depending on the context, in either paragraph (a) or (b) of this section:

(a)
(1) The Federal financial assistance that a recipient receives directly from a BPA award or indirectly from a pass-through entity; or
(2) The cost-reimbursement contract a recipient receives directly from a BPA award or indirectly from a pass-through entity.

(b) The instrument setting forth the terms and conditions.

(c) BPA award does not include other contracts that a Federal agency uses to buy goods or services from a contractor or a contract to operate Federal Government owned, contractor operated facilities (GOCOs).

(d) See also definitions of Federal financial assistance, grant agreement, and cooperative agreement.

BPA award date means the date when the BPA award is signed by the authorized official of BPA.

Federal financial assistance means assistance that recipients receive or administer in the form of:

(a) Grants;

(b) Cooperative agreements;

(c) Non-cash contributions or donations of property (including donated surplus property); and

(d) Other financial assistance.

Federal interest means, for purposes of reporting on real property or when used in connection with the acquisition or improvement of real property, equipment, or supplies under a BPA award, the dollar amount that is the product of the:

(a) Federal share of total project costs; and

(b) Current fair market value of the property, improvements, or both, to the extent the costs of acquiring or improving the property were included as project costs.

Final cost objective means a cost objective which has allocated to it both direct and indirect costs and, in the recipient's accumulation system, is one of the final accumulation points, such as a particular award, internal project, or other direct activity of a recipient.

Financial Assistance means transferring something of value, i.e. money, property, or services, to the recipient to carry out a BPA public purpose.

Fixed amount awards means a type of grant agreement under which BPA or the pass-through entity provides a specific level of support without regard to actual costs incurred under the Federal award. This type of Federal award reduces some of the administrative burden and record-keeping requirements for both the recipient and BPA or the pass-through entity. Accountability is based primarily on performance and results.

Foreign public entity means:

(a) A foreign government or foreign governmental entity;

(b) A public international organization, which is an organization entitled to enjoy privileges, exemptions, and immunities as an international organization under the International Organizations Immunities Act (22 U.S.C. 288-288f);

(c) An entity owned (in whole or in part) or controlled by a foreign government; or

(d) Any other entity consisting wholly or partially of one or more foreign governments or foreign governmental entities.

Foreign organization means an entity that is:

(a) A public or private organization located in a country other than the United States and its territories that is subject to the laws of the country in which it is located, irrespective of the citizenship of project staff or place of performance;

(b) A private nongovernmental organization located in a country other than the United States that solicits and receives cash contributions from the general public;

(c) A charitable organization located in a country other than the United States that is nonprofit and tax exempt under the laws of its country of domicile and operation, and is not a university, college, accredited degree-granting institution of education, private foundation, hospital, organization engaged exclusively in research or scientific activities, church, synagogue, mosque or other similar entities organized primarily for religious purposes; or

(d) An organization located in a country other than the United States not recognized as a Foreign Public Entity.

General purpose equipment means equipment which is not limited to research, medical, scientific or other technical activities. Examples include office equipment and furnishings, modular offices, telephone networks, information technology equipment and systems, air conditioning equipment, reproduction and printing equipment, and motor vehicles.

GAAP has the meaning specified in accounting standards issued by the Government Accounting Standards Board (GASB) and the Financial Accounting Standards Board (FASB).

GAGAS, also known as the Yellow Book, means generally accepted government auditing standards issued by the Comptroller General of the United States, which are applicable to financial audits.

Grant means a legal instrument of financial assistance between BPA or the pass-through entity and a recipient that:

(a) Is used to enter into a relationship the principal purpose of which is to transfer anything of value from BPA or the pass-through entity to the recipient to carry out a BPA public purpose, and not to acquire property or services for BPA or the pass-through entity's direct benefit or use;

(b) The term grant may be used interchangeably with the word contract; therefore, it is imperative that the Contracting Officer read the context around the policy;

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

(d) Does not include an agreement that provides only:
    (1) Direct United States Government cash assistance to an individual;
    (2) A subsidy;
    (3) A loan;
    (4) A loan guarantee; or
    (5) Insurance.

Hospital means a facility licensed as a hospital under the law of any state or a facility operated as a hospital by the United States, a state, or a subdivision of a state.

Improper payment means any payment that should not have been made or that was made in an incorrect amount (including overpayments and underpayments) under statutory, contractual, administrative, or other legally applicable requirements; and includes any payment to an ineligible party, any payment for an ineligible good or service, any duplicate payment, any payment for a good or service not received (except for such payments where authorized by law), any payment that does not account for credit for applicable discounts, and any payment where insufficient or lack of documentation prevents a reviewer from discerning whether a payment was proper.

Indian tribe means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. Chapter 33), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians (25 U.S.C. 450b(e)). See annually published Bureau of Indian Affairs list of Indian Entities Recognized and Eligible to Receive Services.

IHE means Institution of Higher Education and is further defined at 20 U.S.C. 1001.

Indirect (F&A) costs means those costs incurred for a common or joint purpose benefitting more than one cost objective, and not readily assignable to the cost objectives specifically benefitted, without effort disproportionate to the results achieved. To facilitate equitable distribution of indirect expenses to the cost objectives served, it may be necessary to establish a number of pools of indirect (F&A) costs. Indirect (F&A) cost pools must be distributed to benefitted cost objectives on bases that will produce an equitable result in consideration of relative benefits derived.

Indirect cost rate proposal means the documentation prepared by a recipient to substantiate its request for the establishment of an indirect cost rate.

Information technology systems means computing devices, ancillary equipment, software, firmware, and similar procedures, services (including support services), and related resources.

Information Technology Equipment means any equipment, or interconnected system or subsystem of equipment used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information. Information technology requires high-risk controls when it meets any one or more of the following conditions:

(a) It was used to process classified information, unclassified controlled information, or export controlled information.

(b) It must be sanitized prior to disposition, ensuring that all data, information, and software have been removed from the equipment.

Intangible property means property having no physical existence, such as trademarks, copyrights, patents and patent applications and property, such as loans, notes and other debt instruments, lease agreements, stock and other instruments of property ownership (whether the property is tangible or intangible).

Intellectual property means a property right that can be protected under federal and state law, including copyrightable works, ideas, discoveries, and inventions.

Intermediate cost objective means a cost objective that is used to accumulate indirect costs or service center costs that are subsequently allocated to one or more indirect cost pools or final cost objectives.

Internal controls means a process, implemented by a recipient, designed to provide reasonable assurance regarding the achievement of objectives in the following categories:

(a) Effectiveness and efficiency of operations;

(b) Reliability of reporting for internal and external use; and

(c) Compliance with applicable laws and regulations.

Internal control over compliance requirements for BPA awards means a process implemented by a recipient designed to provide reasonable assurance regarding the achievement of the following objectives for BPA awards:

(a) Transactions are properly recorded and accounted for, in order to:
    (1) Permit the preparation of reliable financial statements and BPA reports;
    (2) Maintain accountability over assets; and
    (3) Demonstrate compliance with Federal statutes, regulations, and the terms and conditions of the BPA award;

(b) Transactions are executed in compliance with:
    (1) Federal statutes, regulations, and the terms and conditions of the BPA award that could have a direct and material effect on a Federal program; and
    (2) Any other Federal statutes and regulations that are identified in the Compliance Supplement; and

(c) Funds, property, and other assets are safeguarded against loss from unauthorized use or disposition.

Local government means any unit of government within a state, including a:

(a) County;

(b) Borough;

(c) Municipality;

(d) City;

(e) Town;

(f) Township;

(g) Parish;

(h) Local public authority, including any public housing agency under the United States Housing Act of 1937;

(i) Special district;

(j) School district;

(k) Intrastate district;

(l) Council of governments, whether or not incorporated as a nonprofit corporation under state law; and

(m) Any other agency or instrumentality of a multi-, regional, or intra-state or local government.

Management decision means the evaluation by BPA or the pass-through entity of the audit findings and corrective action plan and the issuance of a written decision to the auditee as to what corrective action is necessary.

Micro-grant means a financial assistance agreement with a total award value not-to-exceed $50,000 and a period of performance of less than one year.

Micro-purchase means an acquisition of supplies or services for which the aggregate amount of which does not exceed the micro-purchase threshold.

Micro-purchase threshold means:

(a) $2,000 for construction subject to 40 U.S.C. chapter 31, subchapter IV, Wage Rate Requirements (formally known as Davis Bacon Act);

(b) $2,500 for services subject to 41 U.S.C. chapter 67, Service Contract Labor Standards (formally known as Service Contract Act);

(c) $150,000 for services not subject to (a) or (b); and

(d) $150,000 for supplies.

MTDC (modified total direct cost) means all direct salaries and wages, applicable fringe benefits, materials and supplies, services, travel, and up to the first $50,000 of each subaward (regardless of the period of performance of the subawards under the award). MTDC excludes equipment, capital expenditures, charges for patient care, rental costs, tuition remission, scholarships and fellowships, participant support costs and the portion of each subaward in excess of $50,000. Other items may only be excluded when necessary to avoid a serious inequity in the distribution of indirect costs, and with the approval of the cognizant agency for indirect costs.

Non-Federal entity (recipient or subrecipient) means a state, local government, Indian tribe, institution of higher education (IHE), or nonprofit organization that carries out a BPA award as a recipient or subrecipient.

Nonprofit organization means any corporation, trust, association, cooperative, or other organization, not including IHEs, that:

(a) Is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest;

(b) Is not organized primarily for profit; and

(c) Uses net proceeds to maintain, improve, or expand the operations of the organization.

Obligations, when used in connection with a recipient's utilization of funds under a BPA award, means orders placed for property and services, contracts and subawards made, and similar transactions during a given period that require payment by the recipient during the same or a future period.

Oversight agency for audit means the Federal awarding agency that provides the predominant amount of funding directly to a recipient not assigned a cognizant agency for audit. When there is no direct funding, the Federal awarding agency which is the predominant source of pass-through funding must assume the oversight responsibilities.

Pass-through entity means a recipient that provides a subaward to a subrecipient to carry out part of a BPA program.

Performance goal means a target level of performance expressed as a tangible, measurable objective, against which actual achievement can be compared, including a goal expressed as a quantitative standard, value, or rate. In some instances (e.g., discretionary research awards), this may be limited to the requirement to submit technical performance reports (to be evaluated in accordance with agency policy).

Period of performance means the time during which the recipient may incur new obligations to carry out the work authorized under the BPA award. BPA or the pass-through entity must include start and end dates of the period of performance in the financial assistance award.

Personal property means tangible property assets and includes motor vehicles, equipment, materials and inventory, but excludes real property and records.

Personally Identifiable Information (PII) means information that can be used to distinguish or trace an individual's identity, either alone or when combined with other personal or identifying information that is linked or linkable to a specific individual. Some information that is considered to be PII is available in public sources such as telephone books, public websites, and university listings. This type of information is considered to be Public PII and includes, for example, first and last name, address, work telephone number, email address, home telephone number, and general educational credentials. The definition of PII is not anchored to any single category of information or technology. Rather, it requires a case-by-case assessment of the specific risk that an individual can be identified. Non-PII can become PII whenever additional information is made publicly available, in any medium and from any source that, when combined with other available information, could be used to identify an individual.

Program income means gross income earned by the recipient that is directly generated by a supported activity or earned as a result of the BPA award during the period of performance. Program income includes but is not limited to income from fees for services performed, the use or rental of real or personal property acquired under BPA awards, the sale of commodities or items fabricated under a BPA award, license fees and royalties on patents and copyrights, and principal and interest on loans made with BPA award funds. Interest earned on advances of Federal funds is not program income. Except as otherwise provided in Federal statutes, regulations, or the terms and conditions of the BPA

award, program income does not include rebates, credits, discounts, and interest earned on any of them.

Property means real property or personal property.

Protected PII means an individual's first name or first initial and last name in combination with any one or more of types of information, including, but not limited to, social security number, passport number, credit card numbers, clearances, bank numbers, biometrics, date and place of birth, mother's maiden name, criminal, medical and financial records, educational transcripts. This does not include PII that is required by law to be disclosed.

Project cost means total allowable costs incurred under a BPA award and all required cost sharing and voluntary committed cost sharing, including third-party contributions.

Questioned cost means a cost that is questioned by the auditor because of an audit finding:

(a) Which resulted from a violation or possible violation of a statute, regulation, or the terms and conditions of a BPA award, including for funds used to match Federal funds;

(b) Where the costs, at the time of the audit, are not supported by adequate documentation; or

(c) Where the costs incurred appear unreasonable and do not reflect the actions a prudent person would take in the circumstances.

Real property means land and land rights, together with the improvements, structures, and fixtures located thereon.

Recipient means a non-Federal entity that receives a BPA award. The term recipient does not include subrecipients.

Recipient support costs means direct costs for items such as stipends or subsistence allowances, travel allowances, and registration fees paid to or on behalf of participants or trainees (but not employees) in connection with conferences, or training projects.

Research and Development (R&D) means all research activities, both basic and applied, and all development activities that are performed by recipients. The term research also includes activities involving the training of individuals in research techniques where such activities utilize the same facilities as other research and development activities and where such activities are not included in the instruction function.

“Research” is defined as a systematic study directed toward fuller scientific knowledge or understanding of the subject studied. “Development” is the systematic use of knowledge and understanding gained from research directed toward the production of useful materials, devices, systems, or methods, including design and development of prototypes and processes.

Special purpose equipment means equipment which is used only for research, medical, scientific, or other technical activities. Examples of special purpose equipment include microscopes, x-ray machines, surgical instruments, and spectrometers.

State means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any agency or instrumentality thereof exclusive of local governments.

SFA (student federal aid) means Federal awards under those programs of general student assistance, such as those authorized by Title IV of the Higher Education Act of 1965, as amended, (20 U.S.C. 1070-1099d), which are administered by the U.S. Department of Education, and similar programs provided by other Federal agencies. It does not include Federal awards under programs that provide fellowships or similar Federal awards to students on a competitive basis, or for specified studies or research.

Subaward means an award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of a BPA award received by the pass-through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program. A subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract.

Subcontractor means any person, other than the prime recipient, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under the award as a contract.

Subrecipient means a non-Federal entity that receives a subaward from a pass-through entity to carry out part of a BPA program; but does not include an individual that is a beneficiary of such program. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency.

Supplies means all tangible personal property other than those described in Equipment. A computing device is a supply if the acquisition cost is less than the lesser of the capitalization level established by the recipient for financial statement purposes or $10,000, regardless of the length of its useful life.

Termination means the ending of a BPA award, in whole or in part at any time prior to the planned end of period of performance.

Third-party in-kind contributions means the value of non-cash contributions (i.e., property or services) that—

(a) Benefit a federally assisted project or program; and

(b) Are contributed by non-Federal third parties, without charge, to a recipient under a BPA award.

Unliquidated obligations means, for financial reports prepared on a cash basis, obligations incurred by the recipient that have not been paid (liquidated). For reports prepared on an accrual expenditure basis, these are obligations incurred by the recipient for which an expenditure has not been recorded.

Unobligated balance means the amount of funds under a BPA award that the recipient has not obligated. The amount is computed by subtracting the cumulative amount of the recipient's unliquidated obligations and expenditures of funds under the BPA award from the cumulative amount of the funds that BPA or the pass-through entity authorized the recipient to obligate.

Voluntary committed cost sharing means cost sharing specifically pledged on a voluntary basis in the proposal's budget or the BPA award on the part of the recipient and that becomes a binding requirement of the BPA award.

PART 2—GENERAL PROVISIONS

2.100 Purpose

(a) This BFAI establishes administrative requirements, cost principles, and audit requirements for financial assistance awards to recipients.

(b) This part provides BPA policies related to the delivery of information to the public, including through the use of electronic media

(c) *Administrative requirements.* Parts 2 through 4 set forth the administrative requirements for grant and cooperative agreements, including the requirements for BPA's management of its grant programs before the award has been made, and the requirements BPA may impose on recipients in the award.

(d) *Cost Principles.* Part 5—Cost Principles establishes principles for determining the allowable costs incurred by recipients under financial assistance awards. The principles are for the purpose of cost determination and are not intended to identify the circumstances or dictate the extent of BPA participation in the financing of a particular program or project. The principles are designed to provide that financial assistance awards bear their fair share of cost recognized under these principles except where restricted or prohibited by statute.

(e) *Single Audit Requirements and Audit Follow-up.* Part 6—Audit Requirements follows the Single Audit Act Amendments of 1996, (31 U.S.C. 7501-7507). It sets forth standards for obtaining consistency and uniformity for the audit of recipients expending financial assistance awards. These provisions also provide the policies and procedures for BPA and pass-through entities when using the results of these audits.

2.101 [Reserved]

2.102 [Reserved]

2.103 [Reserved]

2.104 [Reserved]

2.105 [Reserved]

2.106 [Reserved]

2.107 [Reserved]

2.108 [Reserved]

2.109 [Reserved]

2.110 [Reserved]

2.111 [Reserved]

2.112 Conflict of Interest

BPA has established conflict of interest policies for financial assistance awards. The recipient must disclose in writing any potential conflict of interest to BPA or the pass-through entity in accordance with applicable BPA policy.

2.113 Mandatory disclosures

The recipient or applicant for a financial assistance award must disclose, in a timely manner, in writing to BPA or the pass-through entity all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the financial assistance award.

PART 3—PRE-BPA AWARD REQUIREMENTS AND CONTENTS OF BPA AWARDS

3.200 [Reserved]

3.201 Use of grants and cooperative agreements

(a) BPA or the pass-through entity must decide on the appropriate instrument for the financial assistance award (i.e., grant agreement, cooperative agreement, or contract) in accordance with the Federal Grant and Cooperative Agreement Act (31 U.S.C. 6301-08).

(b) Fixed Amount Awards. In addition to the options described in paragraph (a) of this section, BPA, or the pass-through entities, may use fixed amount awards to which the following conditions apply:
  (1) The financial assistance award amount is negotiated using the cost principles (or other pricing information) as a guide. BPA or the pass-through entity may use fixed amount awards if the project scope is specific and if adequate cost, historical, or unit pricing data is available to establish a fixed amount award based on a reasonable estimate of actual cost. Payments are based on meeting specific requirements of the financial assistance award. Accountability is based on performance and results. Except in the case of termination before completion of the financial assistance award, there is no BPA review of the actual costs incurred by the recipient in performance of the award. Some of the ways in which the financial assistance award may be paid include, but are not limited to:
    (i) In several partial payments, the amount of each agreed upon in advance, and the "milestone" or event triggering the payment also agreed upon in advance, and set forth in the financial assistance award;
    (ii) On a unit price basis, for a defined unit or units, at a defined price or prices, agreed to in advance of performance of the financial assistance award and set forth in the financial assistance award; or,
    (iii) In one payment at financial assistance award completion.
  (2) A fixed amount award cannot be used in programs which require mandatory cost sharing or match.
  (3) The recipient must certify in writing to BPA or the pass-through entity at the end of the financial assistance award that the project or activity was completed or the level of effort was expended. If the required level of activity or effort was not carried out, the amount of the financial assistance award must be adjusted.
  (4) Periodic reports may be established for each financial assistance award.
  (5) Changes in principal investigator, project leader, project partner, or scope of effort must receive the prior written approval of BPA or the pass-through entity.

3.202 [Reserved]

3.203 Announcement of availability of funding opportunity

For competitive grants and cooperative agreements, BPA may announce specific funding opportunities by providing the following information in a notice:

(a) BPA as the awarding agency and a BPA Point of Contact;

(b) Program Description;

(c) Announcement Type;

(d) Restrictions on eligibility, if any;

(e) Instructions to applicants;

(f) Application Review Information including the criteria and process to be used to evaluate applications.

3.204 BPA review of merit of proposals

For competitive grants or cooperative agreements, unless prohibited by Federal statute, BPA may design and execute a merit review process for applications. See also 3.203 Announcement of availability of funding opportunities.

3.205 BPA review of risk posed by applicants

(a) BPA expects to make financial assistance awards to experienced organizations with sound management systems. However, the objective of a specific recipient's program or project to be attained may require that BPA support recipients with lower than desired levels of skill and expertise in some areas of project management. In doing so, the CO shall include sufficient safeguards in the award to protect BPA's program and financial interests.

(b) Prior to making a financial assistance award, BPA will review applicant's qualifications and financial integrity information as appropriate. Awards shall not be made to organizations named in the Excluded Parties Listing System, which can be viewed online at https://www.sam.gov. The CO shall check the list before awarding any financial assistance.

(c) In addition, for competitive grants or cooperative agreements, BPA must have in place a framework for evaluating the risks posed by applicants before they receive financial assistance awards. This evaluation may incorporate results of the evaluation of the applicant's eligibility or the quality of its application. If BPA determines that a financial assistance award will be made, special conditions that correspond to the degree of risk assessed may be applied to the financial assistance award. Criteria to be evaluated must be described in the announcement. In evaluating risks posed by applicants, BPA may use a risk-based approach and may consider any items such as the following:
    (1) Financial stability;
    (2) Quality of management systems and ability to meet the management standards prescribed in this part;
    (3) History of performance. The applicant's record in managing financial assistance awards, if it is a prior recipient of financial assistance awards, including timeliness of compliance with applicable reporting requirements, conformance to the terms and conditions of previous financial assistance awards, and if applicable, the extent to which any previously awarded amounts will be expended prior to future awards;
    (4) Reports and findings from audits performed under Part 6—Audit Requirements or the reports and findings of any other available audits; and
    (5) The applicant's ability to effectively implement statutory, regulatory, or other requirements imposed on recipients.

(d) In addition to this review, BPA must comply with the guidelines on governmentwide suspension and debarment in 2 CFR part 180, and must require recipients to comply with these provisions. These provisions restrict financial assistance awards, subawards and contracts with certain parties that are debarred, suspended or otherwise excluded from or ineligible for participation in Federal programs or activities.

3.206 Standard application requirements

(a) *Paperwork clearances.* BPA may only use application information collections approved by OMB under the Paperwork Reduction Act of 1995 and OMB's implementing regulations in 5 CFR part 1320, Controlling Paperwork Burdens on the Public. Consistent with these requirements, OMB will authorize additional information collections only on a limited basis.

(b) If applicable, BPA may inform applicants and recipients that they do not need to provide certain information otherwise required by the relevant information collection.

3.207 Specific conditions

(a) BPA or the pass-through entity may impose additional specific award conditions as needed, in accordance with paragraphs (b) and (c) of this section, under the following circumstances:
- (1) Based on the criteria set forth in 3.205 BPA review of risk posed by applicants;
- (2) When an applicant or recipient has a history of failure to comply with the general or specific terms and conditions of a financial assistance award;
- (3) When an applicant or recipient is not otherwise responsible.

(b) These additional financial assistance award conditions may include items such as the following:
- (1) Requiring payments as reimbursements rather than advance payments;
- (2) Withholding authority to proceed to the next phase until receipt of evidence of acceptable performance within a given period of performance;
- (3) Requiring additional, more detailed financial reports;
- (4) Requiring additional project monitoring;
- (5) Requiring the recipient to obtain technical or management assistance; or
- (6) Establishing additional prior approvals.

(c) BPA or the pass-through entity must notify the applicant or recipient as to:
- (1) The nature of the additional requirements;
- (2) The reason why the additional requirements are being imposed;
- (3) The nature of the action needed to remove the additional requirement, if applicable;
- (4) The time allowed for completing the actions if applicable, and
- (5) The method for requesting reconsideration of the additional requirements imposed.

(d) Any specific conditions must be promptly removed once the conditions that prompted them have been corrected.

3.208 Certifications and representations

Unless prohibited by Federal statutes or regulations, BPA or the pass-through entity is authorized to require the recipient to submit certifications and representations required by Federal statutes, or regulations on an annual basis. Submission may be required more frequently if the recipient fails to meet a requirement of a financial assistance award.

3.209 Pre-award costs

Costs incurred by the applicant prior to the start date of the period of performance of the financial assistance award must be pre-approved by the CO in writing. Unapproved pre-award expenditures are made at the recipient's risk. Approval of pre-award costs will be recognized in the award document.

3.210 Information contained in a financial assistance award

A financial assistance award may include the following information where applicable:

(a) *General Information*
- (1) Recipient name;
- (2) Financial assistance award Date;
- (3) Period of Performance Start and End Date;
- (4) Amount of Federal Funds Obligated by this action;
- (5) Total Amount of Federal Funds Obligated;
- (6) Total Amount of the financial assistance award;
- (7) Budget Approved by BPA;
- (8) Total Approved Cost Sharing or Matching, where applicable;
- (9) Financial assistance award project description,
- (10) BPA as the Federal awarding agency and contact information for awarding official,
- (11) Identification of whether the award is R&D; and
- (12) Indirect cost rate for the financial assistance award

(b) *Terms and Conditions*
- (1) BPA may incorporate the following terms and conditions in the financial assistance award either in full text or by reference (preferred):
  - (i) Administrative requirements implemented by BPA as specified in this part.
  - (ii) National policy requirements. These include statutory, executive order, other Presidential directive, or regulatory requirements that apply by specific reference and are not program-specific.
- (2) If incorporated by reference, the award must identify the BPA website containing the terms and conditions for financial assistance. When incorporating terms and conditions by reference, a list of the terms and conditions applicable to the award shall be included. The reference must be to the website at which BPA maintains the general terms and conditions.
- (3) If a recipient requests a copy of the full text of the general terms and conditions, BPA must provide it.
- (4) Wherever the general terms and conditions are publicly available, BPA must maintain an archive of previous versions of the general terms and conditions, with effective dates, for use by the recipient, auditors, or others.

3.211 Micro-grants

(a) Financial assistance agreements with a total award value not-to-exceed $50,000 and a period of performance of less than one year, may be awarded providing the following conditions apply:
- (1) Total award value is $50,000 or less;
- (2) Cannot include construction activities;
- (3) BPA will not have substantial involvement;
- (4) Award will not be incrementally funded;
- (5) Costs are reasonable, allowable, and allocable;
- (6) Cannot include acquisition of property greater than $10,000;
- (7) Recipient does not have a significant deficiency or material weakness in their most recent single audit unless they have an acceptable corrective action plan; and
- (8) Is not prohibited elsewhere in the BFAI.

(b) All micro-grants awarded must utilize the Micro-grant form located in Part 8.

(c) After the micro-grant has been fully executed by both parties, advance payments may then be made to the recipient for the entirety of the award value.

3.212 [Reserved]

3.213 Suspension and debarment

Recipients are subject to the nonprocurement debarment and suspension regulations implementing Executive Orders 12549 and 12689, 2 CFR part 180. These regulations restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs or activities unless the CO obtains an HCA waiver prior to award.

PART 4—POST BPA AWARD REQUIREMENTS

STANDARDS FOR FINANCIAL AND PROGRAM MANAGEMENT

4.300 Statutory requirements

(a) BPA must manage and administer the financial assistance award in a manner so as to ensure that BPA funding is consistent with this policy.

(b) The recipient is responsible for complying with all requirements of the financial assistance award.

4.301 [Reserved]

4.302 Financial management

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

(b) The financial management system of each recipient must provide for the following:
   (1) Identification, in its accounts, of all financial assistance awards received and expended and the Federal programs under which they were received. Federal program and BPA award identification must include, as applicable, BPA award identification number and year, BPA's name , and name of the pass-through entity, if any.
   (2) Accurate, current, and complete disclosure of the financial results of each financial assistance award or program in accordance with the reporting requirements set forth in 4.327 Financial reporting and 4.328 Monitoring and reporting program performance. If BPA requires reporting on an accrual basis from a recipient that maintains its records on other than an accrual basis, the recipient must not be required to establish an accrual accounting system. This recipient may develop accrual data for its reports on the basis of an analysis of the documentation on hand. Similarly, a pass-through entity must not require a subrecipient to establish an accrual accounting system and must allow the subrecipient to develop accrual data for its reports on the basis of an analysis of the documentation on hand.
   (3) Records that identify adequately the source and application of funds for federally-funded activities. These records must contain information pertaining to financial assistance awards, authorizations, obligations, unobligated balances, assets, expenditures, income and interest and be supported by source documentation.
   (4) Effective control over, and accountability for, all funds, property, and other assets. The recipient must adequately safeguard all assets and assure that they are used solely for authorized purposes. See 4.303 Internal controls.
   (5) Comparison of expenditures with budget amounts for each financial assistance award.
   (6) Written procedures to implement the requirements of 4.305 Payment.
   (7) Written procedures for determining the allowability of costs in accordance with Part 5—Cost Principles and the terms and conditions of the financial assistance award.

4.303 Internal controls

The recipient must:

(a) Establish and maintain effective internal control over the financial assistance award that provides reasonable assurance that the recipient is managing the financial assistance award in compliance with Federal statutes, regulations, and the terms and conditions of the financial assistance award. These internal controls should be in compliance with guidance in “Standards for Internal Control in the Federal Government” issued by the Comptroller General of the United States or the “Internal Control Integrated Framework”, issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

(b) Comply with Federal statutes, regulations, and the terms and conditions of the financial assistance awards.

(c) Evaluate and monitor the recipient's compliance with statutes, regulations and the terms and conditions of financial assistance awards.

(d) Take prompt action when instances of noncompliance are identified including noncompliance identified in audit findings.

(e) Take reasonable measures to safeguard protected personally identifiable information and other information BPA or the pass-through entity designates as sensitive or the recipient considers sensitive consistent with applicable Federal, state, local, and tribal laws regarding privacy and obligations of confidentiality.

(f) Report loss or compromise of personally identifiable information to privacy@bpa.gov within 24 hours.

4.304 Bonds

The CO may determine the appropriate bonding requirements for construction projects when awarding financial assistance. Bonding is obtained through the contractor or another entity with adequate bonding capacity. BPA is not required to be named on the bond and the recipient remains responsible for all project and bonding requirements.

4.305 Payment

(a) For states, payments are usually governed by Treasury-State CMIA agreements and default procedures codified at 31 CFR Part 205 “Rules and Procedures for Efficient Federal-State Funds Transfers” and TFM 4A-2000 Overall Disbursing Rules for All Federal Agencies.

(b) For recipients other than states, payments methods must minimize the time elapsing between the transfer of funds from the United States Treasury or the pass-through entity and the disbursement by the recipient whether the payment is made by electronic funds transfer, or issuance or redemption of checks, warrants, or payment by other means. See also 4.302 Financial management paragraph (b)(6).

(1) The recipient may be paid in advance, provided BPA has agreed to the advance payment and the recipient maintains or demonstrates the willingness to maintain both written procedures that minimize the time elapsing between the transfer of funds and disbursement by the recipient, and financial management systems that meet the standards for fund control and accountability as established in this part. Advance payments to a recipient must be limited to the minimum amounts needed, cannot exceed 90 days cash requirements, and must be timed in accordance with the actual, immediate cash requirements of the recipient in carrying out the purpose of the approved program or project. The timing and amount of advance payments must be as close as is administratively feasible to the actual disbursements by the recipient for

direct program or project costs and the proportionate share of any allowable indirect costs. The recipient must make timely payment to contractors in accordance with the contract provisions.

(2) Whenever possible, advance payments must be consolidated to cover anticipated cash needs for all financial assistance awards made by BPA to the recipient.
   (i) Advance payment mechanisms include, but are not limited to, Treasury check and electronic funds transfer and must comply with applicable guidance in 31 CFR part 208.
   (ii) Recipients must be authorized to submit requests for advance payments and reimbursements at least monthly

(3) Reimbursement is the preferred method for many BPA projects when BPA sets a specific condition, or when the recipient requests payment by reimbursement. When the reimbursement method is used, BPA or the pass-through entity must make payment within 30 calendar days after receipt of the billing, unless BPA or the pass-through entity reasonably believes the request to be improper.

(4) Use of resources before requesting cash advance payments. To the extent available, the recipient must disburse funds available from program income (including repayments to a revolving fund), rebates, refunds, contract settlements, audit recoveries, and interest earned on such funds before requesting additional cash payments.

(5) Unless otherwise required by Federal statutes, payments for allowable costs by recipients must not be withheld at any time during the period of performance.
   (i) The recipient has failed to comply with the project objectives, Federal statutes, regulations, or the terms and conditions of the financial assistance award.
   (ii) The recipient is delinquent in a debt to the United States as defined in OMB Guidance A-129, “Policies for Federal Credit Programs and Non-Tax Receivables.” Under such conditions, BPA or the pass-through entity may, upon reasonable notice, inform the recipient that payments must not be made for obligations incurred after a specified date until the conditions are corrected or the indebtedness to BPA is liquidated.
   (iii) A payment withheld for failure to comply with financial assistance award conditions, but without suspension of the financial assistance award, must be released to the recipient upon subsequent compliance.
   (iv) A payment must not be made to a recipient for amounts that are withheld by the recipient from payment to contractors to assure satisfactory completion of work. A payment must be made when the recipient actually disburses the withheld funds to the contractors or to escrow accounts established to assure satisfactory completion of work.

(6) Standards governing the use of banks and other institutions as depositories of advance payments under financial assistance awards are as follows.
   (i) BPA and the pass-through entity must not require separate depository accounts for funds provided to a recipient or establish any eligibility requirements for depositories for funds provided to the recipient. However, the recipient must be able to account for the receipt, obligation and expenditure of funds.
   (ii) Advance payments of Federal funds must be deposited and maintained in insured accounts whenever possible.

(7) The recipient must maintain advance payments of financial assistance awards in interest-bearing accounts, unless the following apply.
   (i) The recipient receives less than $120,000 in financial assistance awards per year.
   (ii) The best reasonably available interest-bearing account would not be expected to earn interest in excess of $500 per year on Federal cash balances.
   (iii) The depository would require an average or minimum balance so high that it would not be feasible within the expected Federal and non-Federal cash resources.
   (iv) A foreign government or banking system prohibits or precludes interest bearing accounts.

4.306 Cost sharing or matching

(a) BPA may require mandatory cost share in specific projects. If an Announcement of Availability of Funding Opportunity is issued, it will provide instructions as to the amount of cost share required.

(b) For all financial assistance awards, any shared costs or matching funds and all contributions, including cash and third party in-kind contributions, must be accepted as part of the Recipient's cost sharing or matching when such contributions meet all of the following criteria:
(1) Are verifiable from the Recipient's records;
(2) Are not included as contributions for any other financial assistance award;
(3) Are necessary and reasonable for accomplishment of project or program objectives;
(4) Are allowable under Part 5—Cost Principles;
(5) Are not paid by BPA under another financial assistance award, except where the Federal statute authorizing a program specifically provides that Federal funds made available for such program can be applied to matching or cost sharing requirements of other Federal programs;
(6) Are provided for in the approved budget when required by BPA; and
(7) Conform to other provisions of this part, as applicable.

(c) Unrecovered indirect costs, including indirect costs on cost sharing or matching may be included as part of cost sharing or matching only with the prior approval of BPA. Unrecovered indirect cost means the difference between the amount charged to the financial assistance award and the amount which could have been charged to the financial assistance award under the recipient's approved negotiated indirect cost rate.

(d) Values for recipient contributions of services and property must be established in accordance with the cost principles in Part 5—Cost Principles.

(e) Volunteer services furnished by third-party professional and technical personnel, consultants, and other skilled and unskilled labor may be counted as cost sharing or matching if the service is an integral and necessary part of an approved project or program. Rates for third-party volunteer services must be consistent with those paid for similar work by the recipient. In those instances in which the required skills are not found in the recipient, rates must be consistent with those paid for similar work in the labor market in which the recipient competes for the kind of services involved. In either case, paid fringe benefits that are reasonable, necessary, allocable, and otherwise allowable may be included in the valuation.

(f) When a third-party organization furnishes the services of an employee, these services must be valued at the employee's regular rate of pay plus an amount of fringe benefits that is reasonable, necessary, allocable, and otherwise allowable, and indirect costs at either the third-party organization's approved federally negotiated indirect cost rate or, a rate in accordance with 5.414 Indirect (F&A) costs, paragraph (d), provided these services employ the same skill(s) for which the employee is normally paid. Where donated services are treated as indirect costs, indirect cost rates will separate the value of the donated services so that reimbursement for the donated services will not be made.

(g) Donated property from third parties may include such items as equipment, office supplies, laboratory supplies, or workshop and classroom supplies. Value assessed to donated property included in the cost sharing or matching share must not exceed the fair market value of the property at the time of the donation.

(h) The method used for determining cost sharing or matching for third-party-donated equipment, buildings and land for which title passes to the recipient may differ according to the purpose of the financial assistance award, if paragraph (h)(1) or (2) of this section applies.
  (1) If the purpose of the financial assistance award is to assist the recipient in the acquisition of equipment, buildings or land, the aggregate value of the donated property may be claimed as cost sharing or matching.
  (2) If the purpose of the financial assistance award is to support activities that require the use of equipment, buildings or land, normally only depreciation charges for equipment and buildings may be made. However, the fair market value of equipment or other capital assets and fair rental charges for land may be allowed, provided that BPA has approved the charges.

(i) The value of donated property must be determined in accordance with the usual accounting policies of the recipient, with the following qualifications:
  (1) The value of donated land and buildings must not exceed its fair market value at the time of donation to the recipient.
  (2) The value of donated equipment must not exceed the fair market value of equipment of the same age and condition at the time of donation.
  (3) The value of donated space must not exceed the fair rental value of comparable space and facilities in a privately-owned building in the same locality at the time of donation.
  (4) The value of loaned equipment must not exceed its fair rental value.

(j) For third-party in-kind contributions, the fair market value of goods and services must be documented and to the extent feasible supported by the same methods used internally by the recipient.

(k) For IHEs, see also OMB memorandum M-01-06, dated January 5, 2001, Clarification of OMB A-21 Treatment of Voluntary Uncommitted Cost Sharing and Tuition Remission Costs.

4.307 Program income

(a) *General.* Recipients are encouraged to earn income to defray program costs where appropriate.

(b) *Cost of generating program income.* Costs incidental to the generation of program income may be deducted from gross income to determine program income, provided these costs have not been charged to the financial assistance award.

(c) *Governmental revenues.* Taxes, special assessments, levies, fines, and other such revenues raised by a recipient are not program income.

(d) *Property.* Proceeds from the sale of real property, equipment, or supplies are not program income; such proceeds will be handled in accordance with the requirements of Part 4—Post Financial assistance award Requirements, Property Standards 4.311 Real property, 4.313 Equipment, and 4.314 Supplies, or as specifically identified in Federal statutes, regulations, or the terms and conditions of the financial assistance award.

(e) *Use of program income.*
  (1) *Deduction.* Ordinarily program income must be deducted from total allowable costs to determine the net allowable costs. Program income must be used for current costs unless BPA authorizes otherwise. Program income that the recipient did not anticipate at the time of the financial assistance award must be used to reduce the financial assistance award and recipient contributions rather than to increase the funds committed to the project.

(2) *Addition.* With prior approval of BPA, program income may be added to the financial assistance award by BPA and the recipient. The program income must be used for the purposes and under the conditions of the financial assistance award.
(3) *Cost sharing or matching.* With prior approval of BPA, program income may be used to meet the cost sharing or matching requirement of the financial assistance award. The amount of the financial assistance award remains the same.

(f) *Income after the period of performance.* BPA may negotiate agreements with recipients regarding appropriate uses of income earned after the period of performance as part of the grant closeout process.

(g) Unless the Federal statute, regulations, or terms and conditions for the financial assistance award provide otherwise, the recipient has no obligation to BPA with respect to program income earned from license fees and royalties for copyrighted material, patents, patent applications, trademarks, and inventions made under a financial assistance award to which 37 CFR part 401,"Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Awards, Contracts and Cooperative Agreements" is applicable.

4.308 Revision of budget and program plans

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

(b) Recipients are required to report deviations from budget or project scope or objective, and request prior approvals from BPA for budget and program plan revisions, in accordance with this section.

(c) For non-construction financial assistance awards, recipients must request prior approvals from BPA for one or more of the following program or budget-related reasons:
(1) Change in the scope or the objective of the project or program (even if there is no associated budget revision requiring prior written approval).
(2) Change in a key person specified in the application or the financial assistance award.
(3) The disengagement from the project for more than three months, or a 25 percent reduction in time devoted to the project, by the approved project director or principal investigator.
(4) The inclusion, unless waived by BPA, of costs that require prior approval in accordance with Part 5—Cost Principles or 48 CFR part 31, "Contract Cost Principles and Procedures," as applicable.
(5) The transfer of funds budgeted for participant support costs to other categories of expense.
(6) Unless described in the application and funded in the approved financial assistance awards, the subawarding, transferring or contracting out of any work under a financial assistance award, including fixed amount subawards as described in 4.332 Fixed amount subawards. This provision does not apply to the acquisition of supplies, material, equipment or general support services.
(7) Changes in the approved cost-sharing or matching provided by the recipient.
(8) The need arises for additional Federal funds to complete the project.

(d) BPA is authorized, at its option, to waive prior written approvals required by paragraph (c) of this section. Such waivers may include authorizing recipients to do any one or more of the following:
(1) Incur project costs 90 calendar days before BPA makes the financial assistance award. Expenses more than 90 calendar days pre-award require prior approval of BPA. All costs incurred before BPA makes the financial assistance award are at the recipient's risk (i.e., BPA

is under no obligation to reimburse such costs if for any reason the recipient does not receive a financial assistance award or if the financial assistance award is less than anticipated and inadequate to cover such costs). See also 4.458 Pre-award costs.

(2) Request an extension of the period of performance unless one or more of the conditions outlined in paragraphs (d)(2)(i) through (iii) of this section apply. The recipient must submit their request to BPA in writing with the supporting reasons and proposed revised period of performance at least 30 calendar days before the end of the period of performance specified in the award. Extensions require explicit prior BPA approval when:
   (i) The terms and conditions of the financial assistance award prohibit the extension.
   (ii) The extension requires additional Federal funds.
   (iii) The extension involves any change in the approved objectives or scope of the project.

(3) Carry forward unobligated balances to subsequent periods of performance.

(e) BPA may, at its option, restrict the transfer of funds among direct cost categories or programs, functions and activities for financial assistance awards in which the cumulative amount of such transfers exceeds or is expected to exceed 10 percent of the total budget as last approved by BPA.

(f) All other changes to non-construction budgets, except for the changes described in paragraph (c) of this section, do not require prior approval (see also 5.407 Prior written approval (prior approval)).

(g) For construction financial assistance awards, the recipient must request prior written approval promptly from BPA for budget revisions whenever paragraph (g)(1), (2), or (3) of this section applies.
   (1) The revision results from changes in the scope or the objective of the project or program.
   (2) The need arises for additional Federal funds to complete the project.
   (3) A revision is desired which involves specific costs for which prior written approval requirements may be imposed consistent with applicable OMB cost principles listed in Part 5—Cost Principles.
   (4) When BPA makes a financial assistance award that provides support for construction and non-construction work, BPA may require the recipient to obtain prior approval from BPA before making any fund or budget transfers between the two types of work supported.

(h) When requesting approval for budget revisions, the recipient must use the same format for budget information that was used in the application, unless BPA indicates a letter of request suffices.

(i) Within 30 calendar days from the date of receipt of the request for budget revisions, BPA must review the request and notify the recipient whether the budget revisions have been approved. If the revision is still under consideration at the end of 30 calendar days, BPA must inform the recipient in writing of the date when the recipient may expect the decision.

4.309 Period of performance

A recipient may charge to the financial assistance award only allowable costs incurred during the period of performance (except as described in 5.461 Publication and printing costs) and any costs incurred before BPA or the pass-through entity made the financial assistance award that were authorized by BPA or the pass-through entity.

The period of performance should generally be no longer than 5 years in length, unless a longer period of performance is approved by the Contracting Officer. The period of performance may not exceed ten (10) years without HCA approval.

PROPERTY STANDARDS

4.310 Insurance coverage

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

4.311 Real property

(a) *Title.* Subject to the obligations and conditions set forth in this section, title to real property acquired or improved under a financial assistance award will vest upon acquisition in the recipient.

(b) *Use.* Except as otherwise provided by Federal statutes or by BPA, real property will be used for the originally authorized purpose as long as needed for that purpose, during which time the recipient must not dispose of or encumber its title or other interests.

(c) *Disposition.* When real property is no longer needed for the originally authorized purpose, the recipient must obtain disposition instructions from BPA or the pass-through entity. The instructions must provide for one of the following alternatives:
   (1) Retain title after compensating BPA. The amount paid to BPA will be computed by applying BPA's percentage of participation in the cost of the original purchase (and costs of any improvements) to the fair market value of the property. However, in those situations where the recipient is disposing of real property acquired or improved with a financial assistance award and acquiring replacement real property under the same financial assistance award, the net proceeds from the disposition may be used as an offset to the cost of the replacement property.
   (2) Sell the property and compensate BPA. The amount due to BPA will be calculated by applying BPA's percentage of participation in the cost of the original purchase (and cost of any improvements) to the proceeds of the sale after deduction of any actual and reasonable selling and fixing-up expenses. If the financial assistance award has not been closed out, the net proceeds from sale may be offset against the original cost of the property. When the recipient is directed to sell property, sales procedures must be followed that provide for competition to the extent practicable and result in the highest possible return.
   (3) Transfer title to BPA or to a third party designated/approved by BPA. The recipient is entitled to be paid an amount calculated by applying the recipient's percentage of participation in the purchase of the real property (and cost of any improvements) to the current fair market value of the property.

4.312 Federally-owned and exempt property

(a) Title to federally-owned property, provided by BPA or another federal entity, remains vested in the Federal Government. The recipient must submit annually an inventory listing of federally-owned property in its custody to BPA. Upon completion of the financial assistance award or when the property is no longer needed, the recipient must report the property to BPA for further agency utilization.

(b) If BPA has no further need for the property, it may declare the property excess and the Contracting Officer shall provide disposition instructions.

(c) Exempt federally-owned property means property acquired under a financial assistance award where BPA has chosen to vest title to the property to the recipient without further obligation to BPA, based upon the explicit terms and conditions of the financial assistance award. BPA may

exercise this option when statutory authority exists. Absent statutory authority and specific terms and conditions of the financial assistance award, title to exempt federally-owned property acquired under the financial assistance award remains with BPA.

4.313 Equipment

See also 5.439 Equipment and other capital expenditures.

(a) *Title.* Subject to the obligations and conditions set forth in this section, title to equipment acquired under a financial assistance award will vest upon acquisition in the recipient. Unless a statute specifically authorizes BPA to vest title in the recipient without further obligation to the BPA, and BPA elects to do so, the title must be a conditional title. Title must vest in the recipient subject to the following conditions:
  (1) Use the equipment for the authorized purposes of the project during the period of performance, or until the property is no longer needed for the purposes of the project.
  (2) Not encumber the property without approval of BPA or the pass-through entity.
  (3) Use and dispose of the property in accordance with paragraphs (b), (c) and (e) of this section.

(b) A state must use, manage and dispose of equipment acquired under a financial assistance award by the state in accordance with state laws and procedures. Other recipients must follow paragraphs (c) through (e) of this section.

(c) *Use.*
  (1) Equipment must be used by the recipient 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 the financial assistance award, and the recipient must not encumber the property without prior approval of BPA. When no longer needed for the original program or project, the equipment may be used in other activities supported by BPA, in the following order of priority:
    (i) Activities under a financial assistance award from BPA which funded the original program or project, then
    (ii) Activities under financial assistance awards from other Federal awarding agencies. This includes consolidated equipment for information technology systems.
  (2) During the time that equipment is used on the project or program for which it was acquired, the recipient must also make equipment available for use on other projects or programs currently or previously supported by the Federal Government, provided that such use will not interfere with the work on the projects or program for which it was originally acquired. First preference for other use must be given to other programs or projects supported by BPA where BPA financed the equipment and second preference must be given to programs or projects under financial assistance awards from other Federal awarding agencies. Use for non-federally-funded programs or projects is also permissible. User fees should be considered if appropriate.
  (3) Notwithstanding the encouragement in 4.307 Program income to earn program income, the recipient must not use equipment acquired with the financial assistance award to provide services for a fee that is less than private companies charge for equivalent services unless specifically authorized by Federal statute for as long as the BPA retains an interest in the equipment.
  (4) When acquiring replacement equipment, the recipient may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property.

(d) *Management requirements.* Procedures for managing equipment (including replacement equipment), whether acquired in whole or in part under a financial assistance award, until disposition takes place will, as a minimum, meet the following requirements:
  (1) Property records must be maintained that include a description of the property, a serial number or other identification number, the source of funding for the property, who holds title, the acquisition date, and cost of the property, percentage of Federal participation in the project costs for the financial assistance award under which the property was acquired, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.
  (2) A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.
  (3) A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft must be investigated.
  (4) Adequate maintenance procedures must be developed to keep the property in good condition.
  (5) If the recipient is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return.

(e) *Disposition.* When original or replacement equipment acquired under a financial assistance award is no longer needed for the original project or program or for other activities currently or previously supported by BPA, except as otherwise provided in Federal statutes, regulations, or BPA disposition instructions, the recipient must request disposition instructions from the BPA if required by the terms and conditions of the financial assistance award. Disposition of the equipment will be made as follows, in accordance with BPA disposition instructions:
  (1) Items of equipment with a current per unit fair market value of $10,000 or less may be retained, sold or otherwise disposed of with no further obligation to BPA.
  (2) Except as provided in 4.312 Federally-owned and exempt property, paragraph (b), or if BPA fails to provide requested disposition instructions within 120 days, items of equipment with a current per-unit fair-market value in excess of $10,000 may be retained by the recipient or sold. BPA is entitled to an amount calculated by multiplying the current market value or proceeds from sale by BPA's percentage of participation in the cost of the original purchase. If the equipment is sold, BPA may permit the recipient to deduct and retain from the BPA share $1,000 for its selling and handling expenses.
  (3) The recipient may transfer title to the property to BPA or to an eligible third party provided that, in such cases, the recipient must be entitled to compensation for its attributable percentage of the current fair market value of the property.
  (4) In cases where a recipient fails to take appropriate disposition actions, BPA may direct the recipient to take disposition actions.

4.314 Supplies

See also 5.453 Materials and supplies costs, including costs of computing devices.

(a) Title to supplies will vest in the recipient upon acquisition. If there is a residual inventory of unused supplies exceeding $10,000 in total aggregate value upon termination or completion of the project or program and the supplies are not needed for any other Financial assistance award, the recipient may retain the supplies for use on other activities or sell them, but must, in either case, compensate BPA for its share. The amount of compensation must be computed in the same manner as for equipment. See 4.313 Equipment, paragraph (e)(2) for the calculation methodology.

(b) As long as BPA retains an interest in the supplies, the recipient must not use supplies acquired under a financial assistance award to provide services to other organizations for a fee that is less

than private companies charge for equivalent services, unless specifically authorized by Federal statute.

4.315 Intangible property

(a) Title to intangible property acquired under a financial assistance award vests upon acquisition in the recipient. The recipient must use that property for the originally-authorized purpose, and must not encumber the property without approval of BPA. When no longer needed for the originally authorized purpose, disposition of the intangible property must occur in accordance with the provisions in 4.313 Equipment paragraph (e).

(b) The recipient may copyright any work that is subject to copyright and was developed, or for which ownership was acquired, under a financial assistance award. BPA reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so.

(c) The recipient is subject to applicable regulations governing patents and inventions, including governmentwide regulations issued by the Department of Commerce at 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Awards, Contracts and Cooperative Agreements.”

(d) The BPA has the right to:
  (1) Obtain, reproduce, publish, or otherwise use the data produced under a financial assistance award; and
  (2) Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.

(e) Freedom of Information Act (FOIA).
  (1) In response to a Freedom of Information Act (FOIA) request for research data relating to published research findings produced under a financial assistance award that were used by BPA in developing an agency action that has the force and effect of law, BPA must request, and the recipient must provide, within a reasonable time, the research data so that they can be made available to the public through the procedures established under the FOIA. If BPA obtains the research data solely in response to a FOIA request, BPA may charge the requester a reasonable fee equaling the full incremental cost of obtaining the research data. This fee should reflect costs incurred by the BPA and the recipient. This fee is in addition to any fees BPA may assess under the FOIA (5 U.S.C. 552(a)(4)(A)).
  (2) Published research findings means when:
    (i) Research findings are published in a peer-reviewed scientific or technical journal; or
    (ii) BPA publicly and officially cites the research findings in support of an agency action that has the force and effect of law. “Used by the Federal Government in developing an agency action that has the force and effect of law” is defined as when an agency publicly and officially cites the research findings in support of an agency action that has the force and effect of law.
  (3) Research data means the recorded factual material commonly accepted in the scientific community as necessary to validate research findings, but not any of the following: preliminary analyses, drafts of scientific papers, plans for future research, peer reviews, or communications with colleagues. This “recorded” material excludes physical objects (e.g., laboratory samples). Research data also do not include:

(i) Trade secrets, commercial information, materials necessary to be held confidential by a researcher until they are published, or similar information which is protected under law; and
(ii) Personnel and medical information and similar information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, such as information that could be used to identify a particular person in a research study.

(f) Intellectual Property.
(1) This section sets forth the policies with regard to disposition of rights to data and to inventions conceived or first actually reduced to practice in the course of, or under, a financial assistance award made to any entity by BPA.
(2) Patent rights. Normally, an award will not include a background patent and data provision. However, an award may include the right to license BPA and third party recipients for special purposes. The scope of any such background patent and/or data licensing provision is subject to negotiation.
(3) Copyrights. Any award, during the performance of which the recipient may generate a work that is entitled to copyright protection under 17 U.S.C. § 102, must include Clause 42 Rights in Data.
(4) Data rights. Rights in data - general rule.
(i) Any award that may generate data must include Clause 42 Rights in Data. *Data* means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software.
(ii) Normally, an award will not require the delivery of limited rights data or restricted computer software. However, if the CO, in consultation with BPA's OGC and the program official, determines that delivery of limited rights data or restricted computer software is necessary, the CO may modify the clause Rights in Data after review and concurrence from both OGC and the HCA.
(iii) If software is specified for delivery to BPA, or if other special circumstances exist, e.g., BPA specifying "open-source" treatment of software, then the CO may include in the award special provisions requiring the Recipient to obtain written approval of the CO prior to modifying the retained BPA license, and/or otherwise altering the copyright provisions.
(5) Authorization and consent.
(i) Work performed by a recipient under a grant is not subject to authorization and consent to the use of a patented invention, and BPA assumes no liability for patent infringement by the recipient under 28 U.S.C. 1498.
(ii) Work performed by a recipient under a cooperative agreement is subject to authorization and consent to the use of a patented invention.
(iv) The CO, after review and concurrence from both OGC and the HCA, may include provisions in the cooperative agreement addressing other patent matters related to authorization and consent, such as patent indemnification of BPA by recipient and notice and assistance regarding patent and copyright infringement.

4.316 Property trust relationship

Real property, equipment, and intangible property, that are acquired or improved with a financial assistance award must be held in trust by the recipient as trustee for the beneficiaries of the project or program under which the property was acquired or improved. BPA may require the recipient to record liens or other appropriate notices of record to indicate that personal or real property has been acquired or improved with a financial assistance award and that use and disposition conditions apply to the property.

PROCUREMENT STANDARDS

4.317 Procurements by states

When procuring property and services under a financial assistance award, a state must follow the same policies and procedures it uses for procurements from its non-Federal funds. The state will comply with 4.322 Procurement of recovered *materials* and ensure that every purchase order or other contract includes any clauses required by section 4.326 Contract provisions. All other recipients, including subrecipients of a state, will follow 4.318 General procurement standards through 4.326 Contract provisions.

4.318 General procurement standards

(a) The recipient must use its own documented procurement procedures which reflect applicable State, local, and tribal laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this part.

(b) Recipients must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(c)

(1) The recipient must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a financial assistance award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the recipient may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, recipients may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the recipient.

(2) If the recipient has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, the recipient must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the recipient is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.

(d) The recipient's procedures must avoid acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

(e) To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the Federal Government, the recipient is encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services.

(f) The recipient is encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

(g) The recipient is encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

(h) The recipient must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. See also 3.213 Suspension and debarment.

(i) The recipient must maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(j)
(1) The recipient may use a time and materials type contract only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time and materials type contract means a contract whose cost to a recipient is the sum of:
(i) The actual cost of materials; and
(ii) Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.
(2) Since this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, each contract must set a ceiling price that the contractor exceeds at its own risk. Further, the recipient awarding such a contract must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

(k) The recipient alone must be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the recipient of any contractual responsibilities under its contracts. BPA will not substitute its judgment for that of the recipient unless the matter is primarily a Federal concern. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction.

4.319 [Reserved]

4.320 [Reserved]

4.321 Contracting with small business, disadvantaged small businesses, woman-owned small business, veteran-owned small business, and disabled veteran-owned small businesses

The recipient is encouraged to consider small business, disadvantaged small businesses, woman-owned small business, veteran-owned small business, and disabled veteran-owned small businesses when possible.

4.322 Procurement of recovered materials

A recipient that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired during the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

4.323 [Reserved]

4.324 BPA or the pass-through entity review

(a) The recipient must make available, upon request of BPA or the pass-through entity, technical specifications on proposed procurements where BPA or the pass-through entity believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the recipient desires to have the review accomplished after a solicitation has been developed, BPA or the pass-through entity may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

(b) The recipient must make available, upon request, for BPA or the pass-through entity pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates.

(c) The recipient is exempt from the pre-procurement review in paragraph (b) of this section if BPA or the pass-through entity determines that its procurement systems comply with the standards of this part.
   (1) The recipient may request that its procurement system be reviewed by BPA or the pass-through entity to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews must occur where there is continuous high-dollar funding, and third party contracts are awarded on a regular basis;
   (2) The recipient may self-certify its procurement system. Such self-certification must not limit BPA's right to survey the system. Under a self-certification procedure, BPA may rely on written assurances from the recipient that it is complying with these standards. The recipient must cite specific policies, procedures, regulations, or standards as being in compliance with these requirements and have its system available for review.

4.325 [Reserved]

4.326 Contract provisions

The recipient's contracts must contain the applicable provisions described in Appendix II—Contract Provisions for Recipient Contracts Under Financial assistance awards.

PERFORMANCE AND FINANCIAL MONITORING AND REPORTING

4.327 Financial reporting

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

4.328 Monitoring and reporting program performance

(a) *Monitoring by the recipient.* The recipient is responsible for oversight of the operations of the financial assistance award supported activities. The recipient must monitor its activities under financial assistance awards to assure compliance with applicable BPA requirements and performance expectations are being achieved. Monitoring by the recipient must cover each program, function or activity. See also 4.331 Requirements for the pass-through *entities.*

(b) *Non-construction performance/progress reports.* BPA may use standard, OMB-approved data elements for collection of performance information.
   (1) The recipient must submit performance reports at the interval required by BPA or the pass-through entity to best inform improvements in program outcomes and productivity. Intervals must be no less frequent than annually nor more frequent than quarterly except in unusual circumstances, for example where more frequent reporting is necessary for the effective monitoring of the financial assistance award or could significantly affect program outcomes. Annual reports must be due 90 calendar days after the reporting period; quarterly or semiannual reports must be due 30 calendar days after the reporting period. Alternatively, BPA or the pass-through entity may require annual reports before the anniversary dates of multiple year financial assistance awards. The final performance report will be due 90 calendar days after the period of performance end date. If a justified request is submitted by a recipient, the BPA may extend the due date for any performance report.
   (2) The recipient may be required to submit performance reports using OMB-approved governmentwide standard information collections when providing performance information. As appropriate in accordance with above mentioned information collections, these reports will contain, for each financial assistance award, brief information on the following unless other collections are approved by OMB:
      (i) A comparison of actual accomplishments to the objectives of the financial assistance award established for the period. Where the accomplishments of the financial assistance award can be quantified, a computation of the cost (for example, related to units of accomplishment) may be required if that information will be useful. Where performance trend data and analysis would be informative to the BPA program, BPA should include this as a performance reporting requirement.
      (ii) The reasons why established goals were not met, if appropriate.
      (iii) Additional pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

(c) *Construction performance reports.* For the most part, onsite technical inspections and certified percentage of completion data are relied on heavily by BPA and the pass-through entities to monitor progress under financial assistance awards and subawards for construction. BPA may require additional performance reports when considered necessary.

(d) *Significant developments.* Events may occur between the scheduled performance reporting dates that have significant impact upon the supported activity. In such cases, the recipient must inform BPA or the pass-through entity as soon as the following types of conditions become known:
  (1) Problems, delays, or adverse conditions which will materially impair the ability to meet the objective of the financial assistance award. This disclosure must include a statement of the action taken, or contemplated, and any assistance needed to resolve the situation.
  (2) Favorable developments which enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more or different beneficial results than originally planned.

(e) BPA may make site visits as warranted by program needs.

(f) BPA may waive any performance report required by this part if not needed.

4.329 Reporting on real property

BPA or the pass-through entity must require a recipient to submit reports at least annually on the status of real property in which BPA retains an interest, unless the Federal interest in the real property extends 15 years or longer. In those instances where the Federal interest attached is for a period of 15 years or more, BPA or the pass-through entity, at its option, may require the recipient to report at various multi-year frequencies (e.g., every 2 years or every 3 years, not to exceed a 5-year reporting period; or BPA or a pass-through entity may require annual reporting for the first three years of a financial assistance award and thereafter require reporting every 5 years).

SUBRECIPIENT MONITORING AND MANAGEMENT

4.330 Subrecipient and contractor determinations

The recipient may concurrently receive financial assistance awards as a recipient, a subrecipient, and a contractor, depending on the substance of its agreements with BPA and pass-through entities. Therefore, a pass-through entity must make case-by-case determinations whether each agreement it makes for the disbursement of Federal program funds casts the party receiving the funds in the role of a subrecipient or a contractor. BPA may supply and require recipients to comply with additional guidance to support these determinations provided such guidance does not conflict with this section.

(a) *Subrecipients.* A subaward is for the purpose of carrying out a portion of a financial assistance award and creates a financial assistance relationship with the subrecipient. Characteristics which support the classification of the recipient as a subrecipient include when the recipient:
  (1) Determines who is eligible to receive financial assistance;
  (2) Has its performance measured in relation to whether objectives of a Federal program were met;
  (3) Has responsibility for programmatic decision making;
  (4) Is responsible for adherence to applicable Federal program requirements specified in the financial assistance award; and
  (5) In accordance with its agreement, uses the Federal funds to carry out a program for a public purpose specified in authorizing statute, as opposed to providing goods or services for the benefit of the pass-through entity.

(b) *Contractors.* A contract is for the purpose of obtaining goods and services for the recipient's own use and creates a procurement relationship with the contractor. Characteristics indicative of a procurement relationship between the recipient and a contractor are when the contractor:
  (1) Provides the goods and services within normal business operations;
  (2) Provides similar goods or services to many different purchasers;
  (3) Normally operates in a competitive environment;

(4) Provides goods or services that are ancillary to the operation of the Federal program; and
(5) Is not subject to compliance requirements of the Federal program as a result of the agreement, though similar requirements may apply for other reasons.

(c) *Use of judgment in making determination.* In determining whether an agreement between a pass-through entity and another recipient casts the latter as a subrecipient or a contractor, the substance of the relationship is more important than the form of the agreement. All of the characteristics listed above may not be present in all cases, and the pass-through entity must use judgment in classifying each agreement as a subaward or a procurement contract.

4.331 Requirements for the pass-through entities

All pass-through entities must:

(a) Ensure that every subaward is clearly identified to the subrecipient as a subaward and includes the following information at the time of the subaward and if any of these data elements change, include the changes in subsequent subaward modification. If some of this information is not available, the pass-through entity must provide the best information available to describe the financial assistance award and subaward. Required information includes:
  (1) BPA Award Identification Number
    (i) Subrecipient name;
    (ii) Financial Assistance Award Date of award to the recipient;
    (iii) Subaward Period of Performance Start and End Date;
    (iv) Amount of Federal Funds Obligated by this action by the pass-through entity to the subrecipient;
    (v) Total Amount of Federal Funds Obligated to the subrecipient by the pass-through entity including the current obligation;
    (vi) Total Amount of the financial assistance award committed to the subrecipient by the pass-through entity;
    (vii) Financial assistance award project description;
    (viii) Name of Federal awarding agency (the Bonneville Power Administration), pass-through entity, and contact information for awarding official of the Pass-through entity;
    (ix) Identification of whether the award is R&D; and
    (x) Indirect cost rate for the financial assistance award (including if the de minimis rate is charged per 5.414 Indirect (F&A) costs).
  (2) All requirements imposed by the pass-through entity on the subrecipient so that the financial assistance award is used in accordance with Federal statutes, regulations and the terms and conditions of the financial assistance award;
  (3) Any additional requirements that the pass-through entity imposes on the subrecipient in order for the pass-through entity to meet its own responsibility to BPA including identification of any required financial and performance reports;
  (4) An approved federally recognized indirect cost rate negotiated between the subrecipient and BPA or, if no such rate exists, either a rate negotiated between the pass-through entity and the subrecipient (in compliance with this part), or a de minimis indirect cost rate as defined in 5.414 Indirect (F&A) costs, paragraph (f); and
  (5) A requirement that the subrecipient permit the pass-through entity and auditors to have access to the subrecipient's records and financial statements as necessary for the pass-through entity to meet the requirements of this part.

(b) Monitor the activities of the subrecipient as necessary to ensure that the subaward is used for authorized purposes, in compliance with Federal statutes, regulations, and the terms and

conditions of the subaward; and that subaward performance goals are achieved. Pass-through entity monitoring of the subrecipient must include:
(1) Reviewing financial and performance reports required by the pass-through entity.
(2) Following-up and ensuring that the subrecipient takes timely and appropriate action on all deficiencies pertaining to the Financial assistance award provided to the subrecipient from the pass-through entity detected through audits, on-site reviews, and other means.
(3) Issuing a management decision for audit findings pertaining to the financial assistance award provided to the subrecipient from the pass-through entity as required by 6.521 Management decision.

(c) Verify that every subrecipient is audited as required by Part 6—Audit Requirements when it is expected that the subrecipient's financial assistance awards expended during the respective fiscal year equaled or exceeded the threshold set forth in 6.501 Audit requirements.

(d) Consider whether the results of the subrecipient's audits, on-site reviews, or other monitoring indicate conditions that necessitate adjustments to the pass-through entity's own records.

(e) Consider taking enforcement action against noncompliant subrecipients as described in 4.338 Remedies for noncompliance of this part and in program regulations.

4.332 Fixed amount subawards

With prior written approval from BPA, a pass-through entity may provide subawards based on fixed amounts provided that the subawards meet the requirements for fixed amount awards in 3.201 Use of grants (including fixed amount awards), cooperative agreements, and contracts.

RECORD RETENTION AND ACCESS

4.333 Retention requirements for records

Financial records, supporting documents, statistical records, and all other recipient records pertinent to a financial assistance award must be retained for a period of three years from the date of submission of the final expenditure report or, for financial assistance awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, respectively, as reported to BPA or the pass-through entity in the case of a subrecipient. BPA and pass-through entities must not impose any other record retention requirements upon recipients. The only exceptions are the following:

(a) If any litigation, claim, or audit is started before the expiration of the 3-year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken.

(b) When the recipient is notified in writing by BPA, the cognizant agency for audit, oversight agency for audit, cognizant agency for indirect costs, or the pass-through entity to extend the retention period.

(c) Records for real property and equipment acquired with Federal funds must be retained for 3 years after final disposition.

(d) When records are transferred to or maintained by BPA or the pass-through entity, the 3-year retention requirement is not applicable to the recipient.

(e) Records for program income transactions after the period of performance. In some cases recipients must report program income after the period of performance. Where there is such a

requirement, the retention period for the records pertaining to the earning of the program income starts from the end of the recipient's fiscal year in which the program income is earned.

(f) Indirect cost rate proposals and cost allocations plans. 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).
   (1) *If submitted for negotiation.* If the proposal, plan, or other computation is required to be submitted to BPA (or to the pass-through entity) to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts from the date of such submission.
   (2) *If not submitted for negotiation.* If the proposal, plan, or other computation is not required to be submitted to BPA (or to the pass-through entity) for negotiation purposes, then the 3-year retention period for the proposal, plan, or computation and its supporting records starts from the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

4.334 Requests for transfer of records

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

4.335 Methods for collection, transmission and storage of information

In accordance with the May 2013 Executive Order on Making Open and Machine Readable the New Default for Government Information, BPA and the recipient should, whenever practicable, collect, transmit, and store financial assistance award-related information in open and machine readable formats rather than in closed formats or on paper. BPA or the pass-through entity must always provide or accept paper versions of financial assistance award-related information to and from the recipient upon request. If paper copies are submitted, BPA or the pass-through entity must not require more than an original and two copies. When original records are electronic and cannot be altered, there is no need to create and retain paper copies. When original records are paper, electronic versions may be substituted through the use of duplication or other forms of electronic media provided that they are subject to periodic quality control reviews, provide reasonable safeguards against alteration, and remain readable.

4.336 Access to records

(a) Records of recipients. BPA, Inspectors General, the Comptroller General of the United States, and the pass-through entity, or any of their authorized representatives, must have the right of access to any documents, papers, or other records of the recipient which are pertinent to the financial assistance award, in order to make audits, examinations, excerpts, and transcripts. The right also includes timely and reasonable access to the recipient's personnel for the purpose of interview and discussion related to such documents.

(b) Expiration of right of access. The rights of access in this section are not limited to the required retention period but last as long as the records are retained. BPA and pass-through entities must not impose any other access requirements upon recipients.

4.337 Restrictions on public access to records

BPA may not place restrictions on the recipient that limit public access to the records of the recipient pertinent to a financial assistance award, except for protected personally identifiable information (PII) or when BPA can demonstrate that such records will be kept confidential and would have been exempted from disclosure pursuant to the Freedom of Information Act (5 U.S.C. 552) or controlled unclassified information pursuant to Executive Order 13556 if the records had belonged to BPA. The Freedom of Information Act (5 U.S.C. 552) (FOIA) does not apply to those records that remain under a recipient's control except as required under 4.315 Intangible property. Unless required by Federal, state, local, and tribal statute, recipients are not required to permit public access to their records. The recipient's records provided to BPA generally will be subject to FOIA and applicable exemptions.

REMEDIES FOR NONCOMPLIANCE

4.338 Remedies for noncompliance

If a recipient fails to comply with Federal statutes, regulations or the terms and conditions of a financial assistance award, BPA or the pass-through entity may impose additional conditions, as described in 3.207 Specific conditions. If BPA or the pass-through entity determines that noncompliance cannot be remedied by imposing additional conditions, BPA or the pass-through entity may take one or more of the following actions, as appropriate in the circumstances:

(a) Temporarily withhold cash payments pending correction of the deficiency by the recipient or more severe enforcement action by BPA or the pass-through entity.

(b) Disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance.

(c) Wholly or partly suspend or terminate the financial assistance award.

(d) Initiate suspension or debarment proceedings as authorized under 2 CFR part 180 and BPA policy (or in the case of a pass-through entity, recommend such a proceeding be initiated by BPA).

(e) Withhold further financial assistance awards for the project or program.

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

4.339 Termination

(a) The financial assistance award may be terminated in whole or in part as follows:
  (1) By BPA or the pass-through entity, if a recipient fails to comply with the terms and conditions of a financial assistance award;
  (2) By BPA or the pass-through entity for cause;
  (3) By BPA or the pass-through entity with the consent of the recipient, in which case the two parties must agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated; or
  (4) By the recipient upon sending to BPA or the pass-through entity written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if BPA or the pass-through entity determines in the case of partial termination that the reduced or modified portion of the financial assistance award or subaward will not accomplish the purposes for which the financial assistance award was made, BPA or the pass-through entity may terminate the financial assistance award in its entirety.

(b) When a financial assistance award is terminated or partially terminated, both BPA or the pass-through entity and the recipient remain responsible for compliance with the requirements in 4.343 Closeout and 4.344 Continuing financial responsibilities.

4.340 Notification of termination requirement

BPA or the pass-through entity must provide to the recipient a notice of termination, at least 10 days before the effective date of termination. Such notice shall include, as appropriate--

(a) The basis for the termination;

(b) The effective date of BPA or the pass-through entity action;

(c) A description of the activities affected by the action;

(d) Instructions concerning allowable termination costs;
  (1) Generally, the recipient shall incur no new obligations after the effective date of the termination of an award, or portion thereof.
  (2) The recipient shall cancel as many outstanding obligations as possible.
  (3) BPA shall allow full credit to the recipient for BPA's share of obligations properly incurred by the recipient but which cannot be canceled after the effective date of the termination.

(e) Instructions concerning required final reports and other closeout actions for terminated awards;

(f) A statement of the recipient's limited right to appeal a termination for cause to the Head of Contracting Activity; and

(g) The signature of the Contracting Officer and the date signed.

4.341 Opportunities to object, hearings and appeals

Upon taking any remedy for non-compliance, BPA must provide the recipient an opportunity to object and provide information and documentation challenging the suspension or termination action, in accordance with written processes and procedures published by BPA. BPA or the pass-through entity must comply with any requirements for hearings, appeals or other administrative proceedings to which the recipient is entitled under any statute or regulation applicable to the action involved.

4.342 Effects of suspension and termination

Costs to the recipient resulting from obligations incurred by the recipient during a suspension or after termination of a financial assistance award or subaward are not allowable unless BPA or the pass-through entity expressly authorizes them in the notice of suspension or termination or subsequently. However, costs during suspension or after termination are allowable if:

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

(b) The costs would be allowable if the financial assistance award was not suspended or expired normally at the end of the period of performance in which the termination takes effect.

CLOSEOUT

4.343 Closeout

(a) BPA or the pass-through entity closes out the BPA award when it determines that all applicable administrative actions and all required work of the BPA award have been completed by the recipient. If

the recipient fails to complete the requirements, BPA or the pass-through entity proceeds to close out the BPA award with the information available. This section specifies the actions the recipient and BPA or the pass-through entity t takes to complete this process at the end of the period of performance.

(b)The recipient submits, no later than 120 calendar days after the end date of the period of performance, the final invoice (or request for reimbursement) along with all financial, performance, and other reports as required by the terms and conditions of the BPA award. A subrecipient submits to the pass-through entity, no later than 90 calendar days (or an earlier date as agreed upon by the pass-through entity and subrecipient) after the end date of the period of performance, all financial, performance, and other reports as required by the terms and conditions of the BPA award. BPA or the pass-through entity may approve extensions when requested and justified by the recipient, as applicable.

(c) Unless BPA or the pass-through entity authorizes an extension, a recipient shall liquidate all financial obligations incurred under the BPA award no later than 120 calendar days after the end date of the period of performance as specified in the terms and conditions of the BPA award.

(d) BPA or the pass-through entity makes prompt payments to the recipient for costs meeting the requirements in BFAI Part 5—Cost Principles under the BPA award being closed out.

(e)The recipient promptly refunds any balances of unobligated cash that BPA or the pass-through entity paid in advance or paid and that are not authorized to be retained by the recipient for use in other projects. See OMB Circular A-129 and see BFAI 4.345 Collection of amounts due, for requirements regarding unreturned amounts that become delinquent debts.

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

(g) The recipient accounts for any real and personal property acquired with Federal funds or received from BPA in accordance with BFAI 4.310 Insurance coverage through BFAI 4.316 Property trust relationship and BFAI 4.329 Reporting on real property.

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

(i) If the recipient does not submit their final invoice or request for reimbursement and all reports in accordance with this section and the terms and conditions of the BPA award, then BPA proceeds to close out with the information available within one year of the end date of the period of performance.

(j) If the recipient does not submit all final invoices and reports in accordance with this section within one year of the end date of the period of performance, then additional requirements may be imposed upon the recipient or future financial assistance awards may be withheld, per BFAI 3.207 Specific conditions and BFAI 4.338 (e) Remedies for Noncompliance.

CONTINUING FINANCIAL RESPONSIBILITIES
4.344 Continuing financial responsibilities

The closeout of a financial assistance award does not affect any of the following:

(a) The right of BPA or the pass-through entity to disallow costs and recover funds on the basis of a later audit or other review. BPA or the pass-through entity must make any cost disallowance determination and notify the recipient within the record retention period.

(b) The obligation of the recipient to return any funds due as a result of later refunds, corrections, or other transactions including final indirect cost rate adjustments.

(c) Audit requirements in Part 6—Audit Requirements.

(d) Property management and disposition requirements in Part 4—Post BPA award Requirements, 4.310 Insurance Coverage through 4.316 Property trust relationship.

(e) Records retention as required in Subpart 4—Post Financial Assistance Award Requirements, 4.333 Retention requirements for records through 4.337 Restrictions on public access to records.

(f) An adjustment to the financial assistance award required to reconcile property, indirect cost rate, and/or adjustment to final payment with the recipient.

COLLECTION OF AMOUNTS DUE
4.345 Collection of amounts due

(a) Any funds paid to the recipient in excess of the amount to which the recipient is finally determined to be entitled under the terms of the financial assistance award constitute a debt to BPA. If not paid within 90 calendar days after demand, BPA may reduce the debt by:
  (1) Making an administrative offset against other requests for reimbursements;
  (2) Withholding advance payments otherwise due to the recipient; or
  (3) Other action permitted by Federal statute.

(b) Except where otherwise provided by statutes or regulations, BPA will charge interest on an overdue debt in accordance with the Federal Claims Collection Standards (31 CFR parts 900 through 999). The date from which interest is computed is not extended by litigation or the filing of any form of appeal.

PART 5—COST PRINCIPLES

GENERAL PROVISIONS

5.400 Policy guide

The application of these cost principles is based on the fundamental premises that:

(a) The recipient is responsible for the efficient and effective administration of the financial assistance award through the application of sound management practices.

(b) The recipient assumes responsibility for administering Federal funds in a manner consistent with underlying agreements, program objectives, and the terms and conditions of the financial assistance award.

(c) The recipient, in recognition of its own unique combination of staff, facilities, and experience, has the primary responsibility for employing whatever form of sound organization and management techniques may be necessary in order to assure proper and efficient administration of the financial assistance award.

(d) The application of these cost principles should require no significant changes in the internal accounting policies and practices of the recipient. However, the accounting practices of the recipient must be consistent with these cost principles and support the accumulation of costs as required by the principles, and must provide for adequate documentation to support costs charged to the financial assistance award.

(e) In reviewing, negotiating and approving cost allocation plans or indirect cost proposals, the cognizant agency for indirect costs should generally assure that the recipient is applying these cost accounting principles on a consistent basis during their review and negotiation of indirect cost proposals. Where wide variations exist in the treatment of a given cost item by the recipient, the reasonableness and equity of such treatments should be fully considered.

(f) For recipients that educate and engage students in research, the dual role of students as both trainees and employees (including pre- and post-doctoral staff) contributing to the completion of financial assistance awards for research must be recognized in the application of these principles.

(g) The recipient may not earn or keep any profit resulting from BPA financial assistance, unless explicitly authorized by the terms and conditions of the financial assistance award. See also 4.307 Program income.

5.401 Application

(a) *General.* These principles must be used in determining the allowable costs of work performed by the recipient under financial assistance awards. These principles also must be used by the recipient as a guide in the pricing of fixed-price contracts and subcontracts where costs are used in determining the appropriate price. The principles do not apply to:
  (1) Arrangements under which BPA financing is in the form of scholarships, fellowships, traineeships, or other fixed amounts based on such items as education allowance or published tuition rates and fees.
  (2) For IHEs, capitation awards, which are awards based on case counts or number of beneficiaries according to the terms and conditions of the financial assistance award.
  (3) Fixed amount awards. See also Part 1—Acronyms and Definitions, Fixed amount awards and Use of grants (including fixed amount awards), cooperative agreements, and contracts.
  (4) Other awards under which the recipient is not required to account to BPA for actual costs incurred.

(b) *Exemptions.* Some nonprofit organizations, because of their size and nature of operations, can be considered to be similar to for-profit entities for purpose of applicability of cost principles. Such nonprofit organizations must operate under Federal cost principles applicable to for-profit entities located at 48 CFR 31.2. A listing of these organizations is contained in Appendix VIII—Nonprofit Organizations Exempted from Part 5—Cost Principles.

BASIC CONSIDERATIONS

5.402 Composition of costs

Total cost. The total cost of a financial assistance award is the sum of the allowable direct and allocable indirect costs less any applicable credits and cost-share.

5.403 Factors affecting allowability of costs

Except where otherwise authorized by statute, costs must meet the following general criteria in order to be allowable under financial assistance awards:

(a) Be necessary and reasonable for the performance of the financial assistance award and be allocable thereto under these principles.

(b) Conform to any limitations or exclusions set forth in these principles or in the financial assistance award as to types or amount of cost items.

(c) Be consistent with policies and procedures that apply uniformly to both federally-financed and other activities of the recipient.

(d) Be accorded consistent treatment. A cost may not be assigned to a financial assistance award as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to the financial assistance award as an indirect cost.

(e) Be determined in accordance with generally accepted accounting principles (GAAP), except, for state and local governments and Indian tribes only, as otherwise provided for in this part.

(f) Not be included as a cost or used to meet cost sharing or matching requirements of any other federally-financed program in either the current or a prior period. See also 4.306 Cost sharing or matching paragraph (b).

(g) Be adequately documented. See also 4.300 Statutory and national policy requirements through 4.309 Period of performance.

5.404 Reasonable costs

A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. The question of reasonableness is particularly important when the recipient is predominantly federally-funded. In determining reasonableness of a given cost, consideration must be given to:

(a) Whether the cost is of a type generally recognized as ordinary and necessary for the operation of the recipient or the proper and efficient performance of the financial assistance award.

(b) The restraints or requirements imposed by such factors as: sound business practices; arm's-length bargaining; Federal, state, local, tribal, and other laws and regulations; and terms and conditions of the financial assistance award.

(c) Market prices for comparable goods or services for the geographic area.

(d) Whether the individuals concerned acted with prudence in the circumstances considering their responsibilities to the recipient, its employees, where applicable its students or membership, the public at large, and BPA.

(e) Whether the recipient significantly deviates from its established practices and policies regarding the incurrence of costs, which may unjustifiably increase the financial assistance award's cost.

5.405 Allocable costs

(a) A cost is allocable to a particular financial assistance award or other cost objective if the goods or services involved are chargeable or assignable to that financial assistance award or cost objective in accordance with relative benefits received. This standard is met if the cost:
  (1) Is incurred specifically for the financial assistance award;
  (2) Benefits both the financial assistance award and other work of the recipient and can be distributed in proportions that may be approximated using reasonable methods; and
  (3) Is necessary to the overall operation of the recipient and is assignable in part to the financial assistance award in accordance with the principles in this part.

(b) All activities which benefit from the recipient's indirect (F&A) cost, including unallowable activities and donated services by the recipient or third parties, will receive an appropriate allocation of indirect costs.

(c) Any cost allocable to a particular financial assistance award under the principles provided for in this part may not be charged to other financial assistance awards to overcome fund deficiencies, to avoid restrictions imposed by Federal statutes, regulations, or terms and conditions of the financial assistance awards, or for other reasons. However, this prohibition would not preclude the recipient from shifting costs that are allowable under two or more financial assistance awards in accordance with existing Federal statutes, regulations, or the terms and conditions of the financial assistance awards.

(d) Direct cost allocation principles. If a cost benefits two or more projects or activities in proportions that can be determined without undue effort or cost, the cost must be allocated to the projects based on the proportional benefit. If a cost benefits two or more projects or activities in proportions that cannot be determined because of the interrelationship of the work involved, then, notwithstanding paragraph (c) of this section, the costs may be allocated or transferred to benefited projects on any reasonable documented basis. Where the purchase of equipment or other capital asset is specifically authorized under a financial assistance award, the costs are assignable to the financial assistance award regardless of the use that may be made of the equipment or other capital asset involved when no longer needed for the purpose for which it was originally required. See also 4.310 Insurance coverage through 4.316 Property trust relationship and 4.439 Equipment and other capital expenditures.

(e) If the contract is subject to CAS, costs must be allocated to the contract pursuant to the Cost Accounting Standards. To the extent that CAS is applicable, the allocation of costs in accordance with CAS takes precedence over the allocation provisions in this part.

5.406 Applicable credits

(a) Applicable credits refer to those receipts or reduction-of-expenditure-type transactions that offset or reduce expense items allocable to the financial assistance award as direct or indirect (F&A) costs. Examples of such transactions are: purchase discounts, rebates or allowances, recoveries

or indemnities on losses, insurance refunds or rebates, and adjustments of overpayments or erroneous charges. To the extent that such credits accruing to or received by the recipient relate to allowable costs, they must be credited to the financial assistance award either as a cost reduction or cash refund, as appropriate.

(b) In some instances, the amounts received from BPA to finance activities or service operations of the recipient should be treated as applicable credits. Specifically, the concept of netting such credit items (including any amounts used to meet cost sharing or matching requirements) must be recognized in determining the rates or amounts to be charged to the financial assistance award. 5.436 Depreciation and 5.468 Specialized service facilities, for areas of potential application in the matter of Federal financing of activities.)

5.407 Prior written approval (prior approval)

Under any given financial assistance award, the reasonableness and allocability of certain items of costs may be difficult to determine. In order to avoid subsequent disallowance or dispute based on unreasonableness or nonallocability, the recipient may seek the prior written approval of the cognizant agency for indirect costs or BPA in advance of the incurrence of special or unusual costs. This includes those items of costs prior to award and post-award. Prior written approval should include the timeframe or scope of the agreement. The absence of prior written approval on any element of cost will not, in itself, affect the reasonableness or allocability of that element, unless prior approval is specifically required for allowability as described under certain circumstances in the following sections:

(a) 3.201 Use of grants (including fixed amount awards), cooperative agreements, and contracts, paragraph (b)(5);

(b) 4.306 Cost sharing or matching;

(c) 4.307 Program income;

(d) 4.308 Revision of budget and program plans;

(e) 4.311 Real property;

(f) 4.313 Equipment;

(g) 4.332 Fixed amount subawards;

(h) 5.413 Direct costs, paragraph (c);

(i) 5.430 Compensation—personal services, paragraph (h);

(j) 5.431 Compensation—fringe benefits;

(k) 5.438 Entertainment costs;

(l) 5.439 Equipment and other capital expenditures;

(m) 5.440 Exchange rates;

(n) 5.441 Fines, penalties, damages and other settlements;

(o) 5.442 Fund raising and investment management costs;

(p) 5.445 Goods or services for personal use;

(q) 5.447 Insurance and indemnification;

(r) 5.454 Memberships, subscriptions, and professional activity costs, paragraph (c);

(s) 5.455 Organization costs;

(t) 5.456 Participant support costs;

(u) 5.458 Pre-award costs;

(v) 5.462 Rearrangement and reconversion costs;

(w) 5.467 Selling and marketing costs;

(x) 5.470 Taxes (including Value Added Tax); and

(y) 5.474 Travel costs.

5.408 Limitation on allowance of costs

The financial assistance award may be subject to statutory requirements that limit the allowability of costs. When the maximum amount allowable under a limitation is less than the total amount determined in accordance with the principles in this part, the amount not recoverable under the financial assistance award may not be charged to the financial assistance award.

5.409 Special considerations

In addition to the basic considerations regarding the allowability of costs highlighted in this subtitle, other subtitles in this part describe special considerations and requirements applicable to states, local governments, Indian tribes, and IHEs. In addition, certain provisions among the items of cost in this part, are only applicable to certain types of recipients, as specified in the following sections:

(a) Direct and Indirect (F&A) Costs (5.412 Classification of costs through 5.415 Require certifications) of this part;

(b) Special Considerations for States, Local Governments and Indian Tribes (5.416 Cost allocation plans and indirect cost proposals and 5.417 Interagency service) of this subpart; and

(c) Special Considerations for Institutions of Higher Education (5.418 Costs incurred by states and local governments and 5.419 Cost accounting standards and disclosure statement) of this subpart.

5.410 Collection of unallowable costs

Payments made for costs determined to be unallowable by either BPA, the cognizant agency for indirect costs, or the pass-through entity, either as direct or indirect costs, must be refunded (including interest) to BPA in accordance with instructions that determined the costs are unallowable unless Federal statute or regulation directs otherwise. See also Part 4—Post BPA award Requirements, 4.300 Statutory and national policy requirements through 4.309 Period of performance.

5.411 [Reserved]

DIRECT AND INDIRECT (F&A) COSTS

5.412 Classification of costs

There is no universal rule for classifying certain costs as either direct or indirect (F&A) under every accounting system. A cost may be direct with respect to some specific service or function, but indirect with respect to a financial assistance award or other final cost objective. Therefore, it is essential that each item of cost incurred for the same purpose be treated consistently in like circumstances either as a direct or an indirect (F&A) cost in order to avoid possible double-charging of financial assistance awards. Guidelines for determining direct and indirect (F&A) costs charged to financial assistance awards are provided in this part.

5.413 Direct costs

(a) *General.* Direct costs are those costs that can be identified specifically with a particular final cost objective, such as a financial assistance award, or other internally or externally funded activity, or that can be directly assigned to such activities relatively easily with a high degree of accuracy. Costs incurred for the same purpose in like circumstances must be treated consistently as either direct or indirect (F&A) costs. See also 5.405 Allocable costs.

(b) *Application to financial assistance awards.* Identification with the financial assistance award rather than the nature of the goods and services involved is the determining factor in distinguishing direct from indirect (F&A) costs of financial assistance awards. Typical costs charged directly to a financial assistance award are the compensation of employees who work on that award, their related fringe benefit costs, the costs of materials and other items of expense incurred for the financial assistance award. If directly related to a specific award, certain costs that otherwise would be treated as indirect costs may also include extraordinary utility consumption, the cost of materials supplied from stock or services rendered by specialized facilities or other institutional service operations.

(c) The salaries of administrative and clerical staff should normally be treated as indirect (F&A) costs. Direct charging of these costs may be appropriate only if all of the following conditions are met:
  (1) Administrative or clerical services are integral to a project or activity;
  (2) Individuals involved can be specifically identified with the project or activity;
  (3) Such costs are explicitly included in the budget or have the prior written approval of BPA; and
  (4) The costs are not also recovered as indirect costs.

(d) *Minor items.* Any direct cost of minor amount may be treated as an indirect (F&A) cost for reasons of practicality where such accounting treatment for that item of cost is consistently applied to all Federal and non-Federal cost objectives.

(e) The costs of certain activities are not allowable as charges to financial assistance awards. However, even though these costs are unallowable for purposes of computing charges to financial assistance awards, they nonetheless must be treated as direct costs for purposes of determining indirect (F&A) cost rates and be allocated their equitable share of the recipient's indirect costs if they represent activities which:
  (1) Include the salaries of personnel,
  (2) Occupy space, and
  (3) Benefit from the recipient's indirect (F&A) costs.

(f) For nonprofit organizations, the costs of activities performed by the recipient primarily as a service to members, clients, or the general public when significant and necessary to the recipient's mission

must be treated as direct costs whether or not allowable, and be allocated an equitable share of indirect (F&A) costs. Some examples of these types of activities include:

(1) Maintenance of membership rolls, subscriptions, publications, and related functions. See also 5.454 Memberships, subscriptions, and professional activity costs.
(2) Providing services and information to members, legislative or administrative bodies, or the public. See also 5.454 Memberships, subscriptions, and professional activity costs and 5.450 Lobbying.
(3) Promotion, lobbying, and other forms of public relations. See also 5.421 Advertising and public relations and 5.450 Lobbying.
(4) Conferences except those held to conduct the general administration of the recipient. See also 5.432 Conferences.
(5) Maintenance, protection, and investment of special funds not used in operation of the recipient. See also 5.442 Fund raising and investment management costs.
(6) Administration of group benefits on behalf of members or clients, including life and hospital insurance, annuity or retirement plans, and financial aid. See also 5.431 Compensation—fringe benefits.

5.414 Indirect (F&A) costs

(a) *Facilities and Administration Classification.* For major IHEs and major nonprofit organizations, indirect (F&A) costs must be classified within two broad categories: “Facilities” and “Administration.” “Facilities” is defined as depreciation on buildings, equipment and capital improvement, interest on debt associated with certain buildings, equipment and capital improvements, and operations and maintenance expenses. “Administration” is defined as general administration and general expenses such as the director's office, accounting, personnel and all other types of expenditures not listed specifically under one of the subcategories of “Facilities” (including cross allocations from other pools, where applicable). For nonprofit organizations, library expenses are included in the “Administration” category; for institutions of higher education, they are included in the “Facilities” category.

(b) *Diversity of nonprofit organizations.* Because of the diverse characteristics and accounting practices of nonprofit organizations, it is not possible to specify the types of cost which may be classified as indirect (F&A) cost in all situations. Identification with a financial assistance award rather than the nature of the goods and services involved is the determining factor in distinguishing direct from indirect (F&A) costs of financial assistance awards. However, typical examples of indirect (F&A) cost for many nonprofit organizations may include depreciation on buildings and equipment, the costs of operating and maintaining facilities, and general administration and general expenses, such as the salaries and expenses of executive officers, personnel administration, and accounting.

(c) *BPA Acceptance of Negotiated Indirect Cost Rates.* (See also 4.306 Cost sharing or matching.)
(1) BPA generally accepts negotiated rates issued by a recipient’s CFA. BPA may decide to continue to use the last NICRA rates approved by the Cognizant Federal Agency. However, circumstances may arise where BPA may negotiate a rate different from a negotiated indirect cost rate. The Contracting Officer is the only individual authorized to negotiate a different indirect cost rate on BPA’s behalf. When an indirect cost rate is negotiated between BPA and a recipient, which is different from the entity’s negotiated indirect cost rate, the Contracting Officer shall document the negotiation in the contract file.
(2) As required under 3.203 Announcement of Availability of funding opportunity, BPA must include in the announcement of availability of funding opportunity the policies relating to indirect cost rate reimbursement, matching, or cost share as approved under paragraph (e)(1) of this section. As appropriate, BPA will incorporate discussion of these policies into its

outreach activities with recipients prior to the posting of an announcement of availability of funding opportunity.

(d) Pass-through entities are subject to the requirements in 4.331 Requirements for the pass-through entities, paragraph (a)(4).

(e) Any recipient that has never received a negotiated indirect cost rate, may elect to charge a de minimis rate of 15% of modified total direct costs (MTDC) which may be used indefinitely. As described in 5.403 Factors affecting allowability of costs, costs must be consistently charged as either indirect or direct costs, but may not be double charged or inconsistently charged as both. If chosen, this methodology once elected must be used consistently for all financial assistance awards until such time as a recipient chooses to negotiate for a rate, which the recipient may apply to do at any time.

(f) Any recipient that has a current federally negotiated indirect cost rate may apply for a one-time extension of the rates, prior to the rate's expiration, in that agreement for a period of up to four years. This extension will be subject to the review and approval of BPA for indirect costs. Prior to the end of the 4-year extension, the recipient must re-apply to negotiate a rate. Subsequent one-time extensions (up to four years) are permitted if a renegotiation is completed between each extension request.

5.415 Required certifications

Required certifications include:

(a) To assure that expenditures are proper and in accordance with the terms and conditions of the financial assistance award and approved project budgets, the annual and final fiscal reports or vouchers requesting payment under the agreements must include a certification, signed by an official who is authorized to legally bind the recipient, which reads as follows: "By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the financial assistance award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729-3730 and 3801-3812)."

(b) Certification of cost allocation plan or indirect (F&A) cost rate proposal. Each cost allocation plan or indirect (F&A) cost rate proposal must comply with the following:
  (1) A proposal to establish a cost allocation plan or an indirect (F&A) cost rate, whether submitted to BPA for indirect costs or maintained on file by the recipient, must be certified by the recipient using the Certificate of Cost Allocation Plan or Certificate of Indirect Costs.
  (2) Unless the recipient has elected the option under 5.414 Indirect (F&A) costs, paragraph (e), BPA may disallow all indirect (F&A) costs.

(c) Certifications by nonprofit organizations, as appropriate, that they did not meet the definition of a major nonprofit organization as defined in 5.414 Indirect (F&A) costs, paragraph (a).

SPECIAL CONSIDERATIONS FOR STATES, LOCAL GOVERNMENT AND INDIAN TRIBES

5.416 Cost allocation plans and indirect cost proposals

(a) For states, local governments and Indian tribes, certain services, such as motor pools, computer centers, purchasing, accounting, etc., are provided to operating agencies on a centralized basis. Since financial assistance awards are performed within the individual operating agencies, there

needs to be a process whereby these central service costs can be identified and assigned to benefitted activities on a reasonable and consistent basis. The central service cost allocation plan provides that process.

(b) Individual operating agencies (governmental department or agency), normally charge financial assistance awards for indirect costs through an indirect cost rate. A separate indirect cost rate(s) proposal for each operating agency is usually necessary to claim indirect costs under financial assistance awards. Indirect costs include:
  (1) The indirect costs originating in each department or agency of the governmental unit carrying out financial assistance awards and
  (2) The costs of central governmental services distributed through the central service cost allocation plan and not otherwise treated as direct costs.

5.417 Interagency service

The cost of services provided by one agency to another within the governmental unit may include allowable direct costs of the service plus a pro-rated share of indirect costs. A standard indirect cost allowance equal to ten percent of the direct salary and wage cost of providing the service (excluding overtime, shift premiums, and fringe benefits) may be used in lieu of determining the actual indirect costs of the service.

SPECIAL CONSIDERATIONS FOR INSTITUTIONS OF HIGHER EDUCATION

5.418 Costs incurred by states and local governments

Costs incurred or paid by a state or local government on behalf of its IHEs for fringe benefit programs, such as pension costs and FICA and any other costs specifically incurred on behalf of, and in direct benefit to, the IHEs, are allowable costs of such IHEs whether or not these costs are recorded in the accounting records of the institutions, subject to the following:

(a) The costs meet the requirements of 5.402 Composition of costs through 5.411 Adjustment of previously negotiated indirect (F&A) cost rates containing unallowable costs;

(b) The costs are properly supported by approved cost allocation plans in accordance with applicable Federal cost accounting principles in this part; and

(c) The costs are not otherwise borne directly or indirectly by BPA.

5.419 Cost accounting standards

An IHE that receives aggregate financial assistance awards totaling $50 million or more in its most recently completed fiscal year must comply with the Cost Accounting Standards Board's cost accounting standards located at 48 CFR 9905.501, 9905.502, 9905.505, and 9905.506. CAS-covered contracts awarded to the IHEs are subject to the CAS requirements at 48 CFR 9900 through 9999 and 48 CFR part 30.

GENERAL PROVISIONS FOR SELECTED ITEMS OF COST

5.420 Considerations for selected items of cost

This section provides principles to be applied in establishing the allowability of certain items involved in determining cost, in addition to the requirements of Basic Considerations of this part. These principles apply whether or not a particular item of cost is properly treated as direct cost or indirect (F&A) cost. Failure to mention a particular item of cost is not intended to imply that it is either allowable or unallowable; rather, determination as to allowability in each case should be based on the treatment

provided for similar or related items of cost, and based on the principles described in 5.402 Composition of costs through 5.411 Adjustment of previously negotiated indirect (F&A) cost rates containing unallowable costs. In case of a discrepancy between the provisions of a specific financial assistance award and the provisions below, the financial assistance award governs. Criteria outlined in 5.403 Factors affecting allowability of *costs* must be applied in determining allowability.

5.421 Advertising and public relations

(a) The term advertising costs means the costs of advertising media and corollary administrative costs. Advertising media include magazines, newspapers, radio and television, direct mail, exhibits, electronic or computer transmittals, and the like.

(b) The only allowable advertising costs are those which are solely for:
  (1) The recruitment of personnel required by the recipient for performance of a financial assistance award (See also 5.463 Recruiting costs);
  (2) The procurement of goods and services for the performance of a financial assistance award;
  (3) The disposal of scrap or surplus materials acquired in the performance of a financial assistance award except when recipients are reimbursed for disposal costs at a predetermined amount; or
  (4) Program outreach and other specific purposes necessary to meet the requirements of the financial assistance award.

(c) The term “public relations” includes community relations and means those activities dedicated to maintaining the image of the recipient or maintaining or promoting understanding and favorable relations with the community or public at large or any segment of the public.

(d) The only allowable public relations costs are:
  (1) Costs specifically required by the financial assistance award;
  (2) Costs of communicating with the public and press pertaining to specific activities or accomplishments which result from performance of the financial assistance award (these costs are considered necessary as part of the outreach effort for the financial assistance award); or
  (3) Costs of conducting general liaison with news media and government public relations officers, to the extent that such activities are limited to communication and liaison necessary to keep the public informed on matters of public concern, such as an Announcement of Availability of Funding Opportunity, financial matters, etc.

(e) Unallowable advertising and public relations costs include the following:
  (1) All advertising and public relations costs other than as specified in paragraphs (b) and (d) of this section;
  (2) Costs of meetings, conventions, convocations, or other events related to other activities of the entity (see also 5.432 Conferences), including:
    (i) Costs of displays, demonstrations, and exhibits;
    (ii) Costs of meeting rooms, hospitality suites, and other special facilities used in conjunction with shows and other special events; and
    (iii) Salaries and wages of employees engaged in setting up and displaying exhibits, making demonstrations, and providing briefings;
  (3) Costs of promotional items and memorabilia, including models, gifts, and souvenirs;
  (4) Costs of advertising and public relations designed solely to promote the recipient.

5.422 Advisory councils

Costs incurred by advisory councils or committees are unallowable unless authorized by statute, BPA or as an indirect cost where allocable to financial assistance awards. See 5.444 General costs of government, applicable to states, local governments and Indian tribes.

5.423 Alcoholic beverages

Costs of alcoholic beverages are unallowable.

5.424 Alumni/ae activities

Costs incurred by IHEs for, or in support of, alumni/ae activities are unallowable.

5.425 Audit services

(a) A reasonably proportionate share of the costs of audits required by, and performed in accordance with, the Single Audit Act Amendments of 1996 (31 U.S.C. 7501-7507), as implemented by requirements of this part, are allowable. However, the following audit costs are unallowable:
  (1) Any costs when audits required by the Single Audit Act and Part 6—Audit Requirements have not been conducted or have been conducted but not in accordance therewith; and
  (2) Any costs of auditing a recipient that is exempted from having an audit conducted under the Single Audit Act and Part 6—Audit Requirements because its expenditures under financial assistance awards are less than $1,000,000 during the recipient's fiscal year.

(b) The costs of a financial statement audit of a recipient that does not currently have a financial assistance award may be included in the indirect cost pool for a cost allocation plan or indirect cost proposal.

(c) Pass-through entities may charge financial assistance awards for the cost of agreed-upon-procedures engagements to monitor subrecipients (in accordance with Part 4—Post Financial assistance award Requirements, 4.330 Subrecipient and contractor determinations through 4.332 Fixed Amount Subawards) who are exempted from the requirements of the Single Audit Act and Part 6—Audit Requirements. This cost is allowable only if the agreed-upon-procedures engagements are:
  (1) Conducted in accordance with GAGAS attestation standards;
  (2) Paid for and arranged by the pass-through entity; and
  (3) Limited in scope to one or more of the following types of compliance requirements: activities allowed or unallowed; allowable costs/cost principles; eligibility; and reporting.

5.426 Bad debts

Bad debts (debts which have been determined to be uncollectable), including losses (whether actual or estimated) arising from uncollectable accounts and other claims, are unallowable. Related collection costs, and related legal costs, arising from such debts after they have been determined to be uncollectable are also unallowable. See also 5.428 Collections of improper payments.

5.427 Bonding costs

(a) Bonding costs arise when BPA requires assurance against financial loss to itself or others by reason of the act or default of the recipient. They arise also in instances where the recipient requires similar assurance, including: bonds as bid, performance, payment, advance payment, infringement, and fidelity bonds for employees and officials.

(b) Costs of bonding required pursuant to the terms and conditions of the financial assistance award are allowable.

(c) Costs of bonding required by the recipient in the general conduct of its operations are allowable as an indirect cost to the extent that such bonding is in accordance with sound business practice and the rates and premiums are reasonable under the circumstances.

5.428 Collections of improper payments

The costs incurred by a recipient to recover improper payments are allowable as either direct or indirect costs, as appropriate. Amounts collected may be used by the recipient in accordance with cash management standards set forth in 4.305 *Payment.*

5.429 Commencement and convocation costs

For IHEs, costs incurred for commencements and convocations are unallowable.

5.430 Compensation—personal services

(a) *General.* Compensation for personal services includes all remuneration, paid currently or accrued, for services of employees rendered during the period of performance under the financial assistance award, including but not necessarily limited to wages and salaries. Compensation for personal services may also include fringe benefits which are addressed in 5.431 Compensation—fringe benefits. Costs of compensation are allowable to the extent that they satisfy the specific requirements of this part, and that the total compensation for individual employees:
  (1) Is reasonable for the services rendered and conforms to the established written policy of the recipient consistently applied to both BPA and non-BPA activities;
  (2) Follows an appointment made in accordance with a recipient's laws and/or rules or written policies and meets the requirements of Federal statute, where applicable; and
  (3) Is determined and supported as provided in paragraph (i) of this section, Standards for Documentation of Personnel Expenses, when applicable.

(b) *Reasonableness.* Compensation for employees engaged in work on financial assistance awards will be considered reasonable to the extent that it is consistent with that paid for similar work in other activities of the recipient. In cases where the kinds of employees required for financial assistance awards are not found in the other activities of the recipient, compensation will be considered reasonable to the extent that it is comparable to that paid for similar work in the labor market in which the recipient competes for the kind of employees involved.

(c) *Professional activities outside the recipient.* Unless an arrangement is specifically authorized by BPA, a recipient must follow its written recipient-wide policies and practices concerning the permissible extent of professional services that can be provided outside the recipient for non-organizational compensation. Where such recipient-wide written policies do not exist or do not adequately define the permissible extent of consulting or other non-organizational activities undertaken for extra outside pay, BPA may require that the effort of professional staff working on financial assistance awards be allocated between:
  (1) Recipient activities, and
  (2) Non-organizational professional activities. If BPA considers the extent of non-organizational professional effort excessive or inconsistent with the conflicts-of-interest terms and conditions of the financial assistance award, appropriate arrangements governing compensation will be negotiated on a case-by-case basis.

(d) *Unallowable costs.*
  (1) Costs which are unallowable under other sections of these principles must not be allowable under this section solely on the basis that they constitute personnel compensation.

(2) The allowable compensation for certain employees is subject to a ceiling in accordance with statute. For the amount of the ceiling for cost-reimbursement contracts, the covered compensation subject to the ceiling, the covered employees, and other relevant provisions, see 10 U.S.C. 2324(e)(1)(P), and 41 U.S.C. 1127 and 4304(a)(16). For other types of financial assistance awards, other statutory ceilings may apply.

(e) *Special considerations.* Special considerations in determining allowability of compensation will be given to any change in a recipient's compensation policy resulting in a substantial increase in its employees' level of compensation (particularly when the change was concurrent with an increase in the ratio of financial assistance awards to other activities) or any change in the treatment of allowability of specific types of compensation due to changes in Federal policy.

(f) *Incentive compensation.* Incentive compensation to employees based on cost reduction, or efficient performance, suggestion awards, safety awards, etc., is allowable to the extent that the overall compensation is determined to be reasonable and such costs are paid or accrued pursuant to an agreement entered into in good faith between the recipient and the employees before the services were rendered, or pursuant to an established plan followed by the recipient so consistently as to imply, in effect, an agreement to make such payment.

(g) *Nonprofit organizations.* For compensation to members of nonprofit organizations, trustees, directors, associates, officers, or the immediate families thereof, determination must be made that such compensation is reasonable for the actual personal services rendered rather than a distribution of earnings in excess of costs. This may include director's and executive committee member's fees, incentive awards, allowances for off-site pay, incentive pay, location allowances, hardship pay, and cost-of-living differentials.

(h) *Institutions of higher education (IHEs).*

(1) Certain conditions require special consideration and possible limitations in determining allowable personnel compensation costs under financial assistance awards. Among such conditions are the following:

(i) Allowable activities. Charges to financial assistance awards may include reasonable amounts for activities contributing and directly related to work under an agreement, such as delivering special lectures about specific aspects of the ongoing activity, writing reports and articles, developing and maintaining protocols (human, animals, etc.), managing substances/chemicals, managing and securing project-specific data, coordinating research subjects, participating in appropriate seminars, consulting with colleagues and graduate students, and attending meetings and conferences.

(ii) Incidental activities. Incidental activities for which supplemental compensation is allowable under written institutional policy (at a rate not to exceed institutional base salary) need not be included in the records described in paragraph (i) of this section to directly charge payments of incidental activities, such activities must either be specifically provided for in the financial assistance award budget or receive prior written approval by BPA.

(2) *Salary basis.* Charges for work performed on financial assistance awards by faculty members during the academic year are allowable at the IBS rate. Except as noted in paragraph (h)(1)(ii) of this section, in no event will charges to financial assistance awards, irrespective of the basis of computation, exceed the proportionate share of the IBS for that period. This principle applies to all members of faculty at an institution. IBS is defined as the annual compensation paid by an IHE for an individual's appointment, whether that individual's time is spent on research, instruction, administration, or other activities. IBS excludes any income that an individual earns outside of duties performed for the IHE. Unless there is prior approval by BPA, charges of a faculty member's salary to a financial assistance award must not

exceed the proportionate share of the IBS for the period during which the faculty member worked on the award.

(3) *Intra-Institution of Higher Education (IHE) consulting.* Intra-IHE consulting by faculty is assumed to be undertaken as an IHE obligation requiring no compensation in addition to IBS. However, in unusual cases where consultation is across departmental lines or involves a separate or remote operation, and the work performed by the faculty member is in addition to his or her regular responsibilities, any charges for such work representing additional compensation above IBS are allowable provided that such consulting arrangements are specifically provided for in the financial assistance award or approved in writing by BPA.

(4) Extra Service Pay normally represents overload compensation, subject to institutional compensation policies for services above and beyond IBS. Where extra service pay is a result of Intra-IHE consulting, it is subject to the same requirements of paragraph (b) above. It is allowable if all of the following conditions are met:

(i) The recipient establishes consistent written policies which apply uniformly to all faculty members, not just those working on financial assistance awards.

(ii) The recipient establishes a consistent written definition of work covered by IBS which is specific enough to determine conclusively when work beyond that level has occurred. This may be described in appointment letters or other documentations.

(iii) The supplementation amount paid is commensurate with the IBS rate of pay and the amount of additional work performed. See paragraph (h)(2) of this section.

(iv) The salaries, as supplemented, fall within the salary structure and pay ranges established by and documented in writing or otherwise applicable to the recipient.

(v) The total salaries charged to financial assistance awards including extra service pay are subject to the Standards of Documentation as described in paragraph (i) of this section.

(5) *Periods outside the academic year.*

(i) Except as specified for teaching activity in paragraph (h)(5)(ii) of this section, charges for work performed by faculty members on financial assistance awards during periods not included in the base salary period will be at a rate not in excess of the IBS.

(ii) Charges for teaching activities performed by faculty members on financial assistance awards during periods not included in IBS period will be based on the normal written policy of the IHE governing compensation to faculty members for teaching assignments during such periods.

(6) *Part-time faculty.* Charges for work performed on financial assistance awards by faculty members having only part-time appointments will be determined at a rate not in excess of that regularly paid for part-time assignments.

(7) *Sabbatical leave costs.* Rules for sabbatical leave are as follows:

(i) Costs of leaves of absence by employees for performance of graduate work or sabbatical study, travel, or research are allowable provided the IHE has a uniform written policy on sabbatical leave for persons engaged in instruction and persons engaged in research. Such costs will be allocated on an equitable basis among all related activities of the IHE.

(ii) Where sabbatical leave is included in fringe benefits for which a cost is determined for assessment as a direct charge, the aggregate amount of such assessments applicable to all work of the institution during the base period must be reasonable in relation to the IHE's actual experience under its sabbatical leave policy.

(8) *Salary rates for non-faculty members.* Non-faculty full-time professional personnel may also earn “extra service pay” in accordance with the recipient's written policy and consistent with paragraph (h)(1)(i) of this section.

(i) *Standards for Documentation of Personnel Expenses*

(1) Charges to financial assistance awards for salaries and wages must be based on records that accurately reflect the work performed. These records must:

(i) Be supported by a system of internal control which provides reasonable assurance that the charges are accurate, allowable, and properly allocated;
(ii) Be incorporated into the official records of the recipient;
(iii) Reasonably reflect the total activity for which the employee is compensated by the recipient, not exceeding 100% of compensated activities (for IHE, this per the IHE's definition of IBS);
(iv) Encompass both federally assisted and all other activities compensated by the recipient on an integrated basis, but may include the use of subsidiary records as defined in the recipient's written policy;
(v) Comply with the established accounting policies and practices of the recipient (See paragraph (h)(1)(ii) above for treatment of incidental work for IHEs.); and
(vi) [Reserved]
(vii) Support the distribution of the employee's salary or wages among specific activities or cost objectives if the employee works on more than one financial assistance award; a financial assistance award and non-Financial assistance award; an indirect cost activity and a direct cost activity; two or more indirect activities which are allocated using different allocation bases; or an unallowable activity and a direct or indirect cost activity.
(viii) Budget estimates (i.e., estimates determined before the services are performed) alone do not qualify as support for charges to financial assistance awards, but may be used for interim accounting purposes, provided that:
(A) The system for establishing the estimates produces reasonable approximations of the activity actually performed;
(B) Significant changes in the corresponding work activity (as defined by the recipient's written policies) are identified and entered into the records in a timely manner. Short term (such as one or two months) fluctuation between workload categories need not be considered as long as the distribution of salaries and wages is reasonable over the longer term; and
(C) The recipient's system of internal controls includes processes to review after-the-fact interim charges made to a financial assistance awards based on budget estimates. All necessary adjustment must be made such that the final amount charged to the financial assistance award is accurate, allowable, and properly allocated.
(ix) Because practices vary as to the activity constituting a full workload (for IHEs, IBS), records may reflect categories of activities expressed as a percentage distribution of total activities.
(x) It is recognized that teaching, research, service, and administration are often inextricably intermingled in an academic setting. When recording salaries and wages charged to financial assistance awards for IHEs, a precise assessment of factors that contribute to costs is therefore not always feasible, nor is it expected.

(2) For records which meet the standards required in paragraph (i)(1) of this section, the recipient will not be required to provide additional support or documentation for the work performed, other than that referenced in paragraph (i)(3) of this section.
(3) In accordance with Department of Labor regulations implementing the Fair Labor Standards Act (FLSA) (29 CFR part 516), charges for the salaries and wages of nonexempt employees, in addition to the supporting documentation described in this section, must also be supported by records indicating the total number of hours worked each day.
(4) Salaries and wages of employees used in meeting cost sharing or matching requirements on financial assistance awards must be supported in the same manner as salaries and wages claimed for reimbursement from financial assistance awards.
(5) For states, local governments and Indian tribes, substitute processes or systems for allocating salaries and wages to financial assistance awards may be used in place of or in addition to the records described in paragraph (1) if approved by the cognizant agency for indirect cost. Such

systems may include, but are not limited to, random moment sampling, “rolling” time studies, case counts, or other quantifiable measures of work performed.

(i) Substitute systems which use sampling methods (primarily for Temporary Assistance for Needy Families (TANF), the Supplemental Nutrition Assistance Program (SNAP), Medicaid, and other public assistance programs) must meet acceptable statistical sampling standards including:
  (A) The sampling universe must include all of the employees whose salaries and wages are to be allocated based on sample results except as provided in paragraph (i)(5)(iii) of this section;
  (B) The entire time period involved must be covered by the sample; and
  (C) The results must be statistically valid and applied to the period being sampled.

(ii) Allocating charges for the sampled employees' supervisors, clerical and support staffs, based on the results of the sampled employees, will be acceptable.

(iii) Less than full compliance with the statistical sampling standards noted in subsection (5)(i) may be accepted by the cognizant agency for indirect costs if it concludes that the amounts to be allocated to financial assistance awards will be minimal, or if it concludes that the system proposed by the recipient will result in lower costs to financial assistance awards than a system which complies with the standards.

(6) Cognizant agencies for indirect costs are encouraged to approve alternative proposals based on outcomes and milestones for program performance where these are clearly documented. Where approved by the Federal cognizant agency for indirect costs, these plans are acceptable as an alternative to the requirements of paragraph (i)(1) of this section.

(7) For financial assistance awards of similar purpose activity or instances of approved blended funding, a recipient may submit performance plans that incorporate funds from multiple financial assistance awards and account for their combined use based on performance-oriented metrics, provided that such plans are approved in advance by all involved Federal awarding agencies. In these instances, the recipient must submit a request for waiver of the requirements based on documentation that describes the method of charging costs, relates the charging of costs to the specific activity that is applicable to all fund sources, and is based on quantifiable measures of the activity in relation to time charged.

(8) For a recipient where the records do not meet the standards described in this section, BPA may require personnel activity reports, including prescribed certifications, or equivalent documentation that support the records as required in this section.

5.431 Compensation—fringe benefits

(a) Fringe benefits are allowances and services provided by employers to their employees as compensation in addition to regular salaries and wages. Fringe benefits include, but are not limited to, the costs of leave (vacation, family-related, sick or military), employee insurance, pensions, and unemployment benefit plans. Except as provided elsewhere in these principles, the costs of fringe benefits are allowable provided that the benefits are reasonable and are required by law, recipient-employee agreement, or an established policy of the recipient.

(b) *Leave.* The cost of fringe benefits in the form of regular compensation paid to employees during periods of authorized absences from the job, such as for annual leave, family-related leave, sick leave, holidays, court leave, military leave, administrative leave, and other similar benefits, are allowable if all of the following criteria are met:
  (1) They are provided under established written leave policies;
  (2) The costs are equitably allocated to all related activities, including financial assistance awards; and,

(3) The accounting basis (cash or accrual) selected for costing each type of leave is consistently followed by the recipient or specified grouping of employees.
   (i) When a recipient uses the cash basis of accounting, the cost of leave is recognized in the period that the leave is taken and paid for. Payments for unused leave when an employee retires or terminates employment are allowable in the year of payment.
   (ii) The accrual basis may be only used for those types of leave for which a liability as defined by GAAP exists when the leave is earned. When a recipient uses the accrual basis of accounting, allowable leave costs are the lesser of the amount accrued or funded.

(c) The cost of fringe benefits in the form of employer contributions or expenses for social security; employee life, health, unemployment, and worker's compensation insurance (except as indicated in 5.447 Insurance and indemnification); pension plan costs (see paragraph (i) of this section); and other similar benefits are allowable, provided such benefits are granted under established written policies. Such benefits must be allocated to BPA awards and all other activities in a manner consistent with the pattern of benefits attributable to the individuals or group(s) of employees whose salaries and wages are chargeable to such financial assistance awards and other activities, and charged as direct or indirect costs in accordance with the recipient's accounting practices.

(d) Fringe benefits may be assigned to cost objectives by identifying specific benefits to specific individual employees or by allocating on the basis of entity-wide salaries and wages of the employees receiving the benefits. When the allocation method is used, separate allocations must be made to selective groupings of employees, unless the recipient demonstrates that costs in relationship to salaries and wages do not differ significantly for different groups of employees.

(e) *Insurance.* See also 5.447 Insurance and indemnification, paragraphs (d)(1) and (2).
   (1) Provisions for a reserve under a self-insurance program for unemployment compensation or workers' compensation are allowable to the extent that the provisions represent reasonable estimates of the liabilities for such compensation, and the types of coverage, extent of coverage, and rates and premiums would have been allowable had insurance been purchased to cover the risks. However, provisions for self-insured liabilities which do not become payable for more than one year after the provision is made must not exceed the present value of the liability.
   (2) Costs of insurance on the lives of trustees, officers, or other employees holding positions of similar responsibility are allowable only to the extent that the insurance represents additional compensation. The costs of such insurance when the recipient is named as beneficiary are unallowable.
   (3) Actual claims paid to or on behalf of employees or former employees for workers' compensation, unemployment compensation, severance pay, and similar employee benefits (e.g., post-retirement health benefits), are allowable in the year of payment provided that the recipient follows a consistent costing policy.

(f) *Automobiles.* That portion of automobile costs furnished by the entity that relates to personal use by employees (including transportation to and from work) is unallowable as fringe benefit or indirect (F&A) costs regardless of whether the cost is reported as taxable income to the employees.

(g) *Pension Plan Costs.* Pension plan costs which are incurred in accordance with the established policies of the recipient are allowable, provided that:
   (1) Such policies meet the test of reasonableness.
   (2) The methods of cost allocation are not discriminatory.
   (3) For entities using accrual based accounting, the cost assigned to each fiscal year is determined in accordance with GAAP.

(4) The costs assigned to a given fiscal year are funded for all plan participants within six months after the end of that year. However, increases to normal and past service pension costs caused by a delay in funding the actuarial liability beyond 30 calendar days after each quarter of the year to which such costs are assignable are unallowable. Recipient may elect to follow the "Cost Accounting Standard for Composition and Measurement of Pension Costs" (48 CFR 9904.412).

(5) Pension plan termination insurance premiums paid pursuant to the Employee Retirement Income Security Act (ERISA) of 1974 (29 U.S.C. 1301-1461) are allowable. Late payment charges on such premiums are unallowable. Excise taxes on accumulated funding deficiencies and other penalties imposed under ERISA are unallowable.

(6) Pension plan costs may be computed using a pay-as-you-go method or an acceptable actuarial cost method in accordance with established written policies of the recipient.

(i) For pension plans financed on a pay-as-you-go method, allowable costs will be limited to those representing actual payments to retirees or their beneficiaries.

(ii) Pension costs calculated using an actuarial cost-based method recognized by GAAP are allowable for a given fiscal year if they are funded for that year within six months after the end of that year. Costs funded after the six month period (or a later period agreed to by the cognizant agency for indirect costs) are allowable in the year funded. The cognizant agency for indirect costs may agree to an extension of the six month period if an appropriate adjustment is made to compensate for the timing of the charges to the Federal Government and related Federal reimbursement and the recipient's contribution to the pension fund. Adjustments may be made by cash refund or other equitable procedures to compensate the Federal Government for the time value of Federal reimbursements in excess of contributions to the pension fund.

(iii) Amounts funded by the recipient in excess of the actuarially determined amount for a fiscal year may be used as the recipient's contribution in future periods.

(iv) When a recipient converts to an acceptable actuarial cost method, as defined by GAAP, and funds pension costs in accordance with this method, the unfunded liability at the time of conversion is allowable if amortized over a period of years in accordance with GAAP.

(v) The Federal Government must receive an equitable share of any previously allowed pension costs (including earnings thereon) which revert or inure to the recipient in the form of a refund, withdrawal, or other credit.

(h) *Post-Retirement Health.* Post-retirement health plans (PRHP) refers to costs of health insurance or health services not included in a pension plan covered by paragraph (g) of this section for retirees and their spouses, dependents, and survivors. PRHP costs may be computed using a pay-as-you-go method or an acceptable actuarial cost method in accordance with established written policies of the recipient.

(1) For PRHP financed on a pay-as-you-go method, allowable costs will be limited to those representing actual payments to retirees or their beneficiaries.

(2) PRHP costs calculated using an actuarial cost method recognized by GAAP are allowable if they are funded for that year within six months after the end of that year. Costs funded after the six month period (or a later period agreed to by the cognizant agency) are allowable in the year funded. The Federal cognizant agency for indirect costs may agree to an extension of the six month period if an appropriate adjustment is made to compensate for the timing of the charges to the Federal Government and related Federal reimbursements and the recipient's contributions to the PRHP fund. Adjustments may be made by cash refund, reduction in current year's PRHP costs, or other equitable procedures to compensate BPA for the time value of Federal reimbursements in excess of contributions to the PRHP fund.

(3) Amounts funded in excess of the actuarially determined amount for a fiscal year may be used as the recipient contribution in a future period.

(4) When a recipient converts to an acceptable actuarial cost method and funds PRHP costs in accordance with this method, the initial unfunded liability attributable to prior years is allowable if amortized over a period of years in accordance with GAAP, or, if no such GAAP period exists, over a period negotiated with the cognizant agency for indirect costs.
(5) To be allowable in the current year, the PRHP costs must be paid either to:
  (i) An insurer or other benefit provider as current year costs or premiums, or
  (ii) An insurer or trustee to maintain a trust fund or reserve for the sole purpose of providing post-retirement benefits to retirees and other beneficiaries.
(6) BPA must receive an equitable share of any amounts of previously allowed post-retirement benefit costs (including earnings thereon) which revert or inure to the recipient in the form of a refund, withdrawal, or other credit.

(i) *Severance Pay.*
(1) Severance pay, also commonly referred to as dismissal wages, is a payment in addition to regular salaries and wages, by recipients to workers whose employment is being terminated. Costs of severance pay are allowable only to the extent that in each case, it is required by (a) law, (b) employer-employee agreement, (c) established policy that constitutes, in effect, an implied agreement on the recipient's part, or (d) circumstances of the particular employment.
(2) Costs of severance payments are divided into two categories as follows:
  (i) Actual normal turnover severance payments must be allocated to all activities; or, where the recipient provides for a reserve for normal severances, such method will be acceptable if the charge to current operations is reasonable in light of payments actually made for normal severances over a representative past period, and if amounts charged are allocated to all activities of the recipient.
  (ii) Measurement of costs of abnormal or mass severance pay by means of an accrual will not achieve equity to both parties. Thus, accruals for this purpose are not allowable. However, BPA recognizes its obligation to participate, to the extent of its fair share, in any specific payment. Prior approval by BPA or cognizant agency for indirect cost, as appropriate, is required.
(3) Costs incurred in certain severance pay packages which are in an amount in excess of the normal severance pay paid by the recipient to an employee upon termination of employment and are paid to the employee contingent upon a change in management control over, or ownership of, the recipient's assets, are unallowable.
(4) Severance payments to foreign nationals employed by the recipient outside the United States, to the extent that the amount exceeds the customary or prevailing practices for the recipient in the United States, are unallowable, unless they are necessary for the performance of Federal programs and approved by BPA.
(5) Severance payments to foreign nationals employed by the recipient outside the United States due to the termination of the foreign national as a result of the closing of, or curtailment of activities by, the recipient in that country, are unallowable, unless they are necessary for the performance of Federal programs and approved by BPA.

(j) *For IHEs only.*
(1) Fringe benefits in the form of undergraduate and graduate tuition or remission of tuition for individual employees are allowable, provided such benefits are granted in accordance with established recipient policies, and are distributed to all recipient activities on an equitable basis. Tuition benefits for family members other than the employee are unallowable.
(2) Fringe benefits in the form of tuition or remission of tuition for individual employees not employed by IHEs are limited to the tax-free amount allowed per section 127 of the Internal Revenue Code as amended.

(3) IHEs may offer employees tuition waivers or tuition reductions, provided that the benefit does not discriminate in favor of highly compensated employees. Employees can exercise these benefits at other institutions according to institutional policy. See 5.466 Scholarships and student aid costs, for treatment of tuition remission provided to students.

(k) For IHEs whose costs are paid by state or local governments, fringe benefit programs (such as pension costs and FICA) and any other benefits costs specifically incurred on behalf of, and in direct benefit to, the recipient, are allowable costs of such recipients whether or not these costs are recorded in the accounting records of the recipients, subject to the following:
(1) The costs meet the requirements of Basic Considerations in 5.402 Composition of costs through 5.411 Adjustment of previously negotiated indirect (F&A) cost rates containing unallowable costs of this subpart;
(2) The costs are properly supported by approved cost allocation plans in accordance with applicable Federal cost accounting principles; and
(3) The costs are not otherwise borne directly or indirectly by BPA.

5.432 Conferences

A conference is defined as a meeting, retreat, seminar, symposium, workshop or event whose primary purpose is the dissemination of technical information beyond the recipient and is necessary and reasonable for successful performance under the financial assistance award. Allowable conference costs paid by the recipient as a sponsor or host of the conference may include rental of facilities, speakers' fees, costs of meals and refreshments, local transportation, and other items incidental to such conferences unless further restricted by the terms and conditions of the financial assistance award. As needed, the costs of identifying, but not providing, locally available dependent-care resources are allowable. Conference hosts/sponsors must exercise discretion and judgment in ensuring that conference costs are appropriate, necessary and managed in a manner that minimizes costs to the financial assistance award. BPA may authorize exceptions where appropriate for programs including Indian tribes, children, and the elderly. See also 5.438 Entertainment costs, 5.456 Participant support costs, 5.474 Travel costs, and 5.475 Trustees.

5.433 Contingency provisions

(a) Contingency is that part of a budget estimate of future costs (typically of large construction projects, IT systems, or other items as approved by BPA) which is associated with possible events or conditions arising from causes the precise outcome of which is indeterminable at the time of estimate, and that experience shows will likely result, in aggregate, in additional costs for the approved activity or project. Amounts for major project scope changes, unforeseen risks, or extraordinary events may not be included.

(b) It is permissible for contingency amounts other than those excluded in paragraph (a) of this section to be explicitly included in budget estimates, to the extent they are necessary to improve the precision of those estimates. Amounts must be estimated using broadly-accepted cost estimating methodologies, specified in the budget documentation of the financial assistance award, and accepted by BPA. As such, contingency amounts are to be included in the financial assistance award. In order for actual costs incurred to be allowable, they must comply with the cost principles and other requirements in this part (see also 4.300 Statutory and national policy requirements through 4.309 Period of performance of Part 4 and 5.403 Factors affecting allowability of costs); be necessary and reasonable for proper and efficient accomplishment of project or program objectives, and be verifiable from the recipient's records.

(c) Payments made by BPA to the recipient's “contingency reserve” or any similar payment made for events the occurrence of which cannot be foretold with certainty as to the time or intensity, or with an assurance of their happening, are unallowable, except as noted in 5.431 Compensation—fringe benefits regarding self-insurance, pensions, severance and post-retirement health costs and 5.447 Insurance and indemnification.

5.434 Contributions and donations

(a) Costs of contributions and donations, including cash, property, and services, from the recipient to other entities, are unallowable.

(b) The value of services and property donated to the recipient may not be charged to the financial assistance award either as a direct or indirect (F&A) cost. The value of donated services and property may be used to meet cost sharing or matching requirements (see 4.306 Cost sharing or matching). Depreciation on donated assets is permitted in accordance with 5.436 Depreciation, as long as the donated property is not counted towards cost sharing or matching requirements.

(c) Services donated or volunteered to the recipient may be furnished to a recipient by professional and technical personnel, consultants, and other skilled and unskilled labor. The value of these services may not be charged to the financial assistance award either as a direct or indirect cost. However, the value of donated services may be used to meet cost sharing or matching requirements in accordance with the provisions of 4.306 Cost sharing or matching.

(d) To the extent feasible, services donated to the recipient will be supported by the same methods used to support the allocability of regular personnel services.

(e) The following provisions apply to nonprofit organizations. The value of services donated to the nonprofit organization utilized in the performance of a direct cost activity must be considered in the determination of the recipient's indirect cost rate(s) and, accordingly, must be allocated a proportionate share of applicable indirect costs when the following circumstances exist:
  (1) The aggregate value of the services is material;
  (2) The services are supported by a significant amount of the indirect costs incurred by the recipient;
    (i) In those instances where there is no basis for determining the fair market value of the services rendered, the recipient and the cognizant agency for indirect costs must negotiate an appropriate allocation of indirect cost to the services.
    (ii) Where donated services directly benefit a project supported by the financial assistance award, the indirect costs allocated to the services will be considered as a part of the total costs of the project. Such indirect costs may be reimbursed under the financial assistance award or used to meet cost sharing or matching requirements.

(f) Fair market value of donated services must be computed as described in 4.306 Cost sharing or matching.

(g) Personal Property and Use of Space.
  (1) Donated personal property and use of space may be furnished to a recipient. The value of the personal property and space may not be charged to the financial assistance award either as a direct or indirect cost.
  (2) The value of the donations may be used to meet cost sharing or matching share requirements under the conditions described in 4.300 Statutory and national policy requirements through 4.309 Period of performance. The value of the donations must be determined in accordance with 4.300 Statutory and national policy requirements through 4.309 Period of performance.

Where donations are treated as indirect costs, indirect cost rates will separate the value of the donations so that reimbursement will not be made.

5.435 Defense and prosecution of criminal and civil proceedings, claims, appeals and patent infringements

(a) *Definitions for the purposes of this section.*
- (1) *Conviction* means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon verdict or a plea, including a conviction due to a plea of nolo contendere.
- (2) *Costs* include the services of in-house or private counsel, accountants, consultants, or others engaged to assist the recipient before, during, and after commencement of a judicial or administrative proceeding, that bear a direct relationship to the proceeding.
- (3) *Fraud* means:
  - (i) Acts of fraud or corruption or attempts to defraud the Federal Government or to corrupt its agents,
  - (ii) Acts that constitute a cause for debarment or suspension (as specified in agency regulations), and
  - (iii) Acts which violate the False Claims Act (31 U.S.C. 3729-3732) or the Anti-kickback Act (41 U.S.C. 1320a-7b(b)).
- (4) *Penalty* does not include restitution, reimbursement, or compensatory damages.
- (5) *Proceeding* includes an investigation.

(b) *Costs.*
- (1) Except as otherwise described herein, costs incurred in connection with any criminal, civil or administrative proceeding (including filing of a false certification) commenced by the Federal Government, a state, local government, or foreign government, or joined by the Federal Government (including a proceeding under the False Claims Act), against the recipient, (or commenced by third parties or a current or former employee of the recipient who submits a whistleblower complaint of reprisal in accordance with 10 U.S.C. 2409 or 41 U.S.C. 4712), are not allowable if the proceeding:
  - (i) Relates to a violation of, or failure to comply with, a Federal, state, local or foreign statute, regulation or the terms and conditions of the financial assistance award, by the recipient (including its agents and employees); and
  - (ii) Results in any of the following dispositions:
    - (A) In a criminal proceeding, a conviction.
    - (B) In a civil or administrative proceeding involving an allegation of fraud or similar misconduct, a determination of recipient liability.
    - (C) In the case of any civil or administrative proceeding, the disallowance of costs or the imposition of a monetary penalty, or an order issued by BPA to the recipient to take corrective action under 10 U.S.C. 2409 or 41 U.S.C. 4712.
    - (D) A final decision by an appropriate Federal official to debar or suspend the recipient, to rescind or void a financial assistance award, or to terminate a financial assistance award by reason of a violation or failure to comply with a statute, regulation, or the terms and conditions of the financial assistance award.
    - (E) A disposition by consent or compromise, if the action could have resulted in any of the dispositions described in paragraphs (b)(1)(ii)(A) through (D) of this section.
- (2) If more than one proceeding involves the same alleged misconduct, the costs of all such proceedings are unallowable if any results in one of the dispositions shown in paragraph (b) of this section.

(c) If a proceeding referred to in paragraph (b) of this section is commenced by the Federal Government and is resolved by consent or compromise pursuant to an agreement by the recipient and the Federal Government, then the costs incurred may be allowed to the extent specifically provided in such agreement.

(d) If a proceeding referred to in paragraph (b) of this section is commenced by a state, local or foreign government, the authorized BPA official may allow the costs incurred if such authorized official determines that the costs were incurred as a result of:
(1) A specific term or condition of the financial assistance award, or
(2) Specific written direction of an authorized official of BPA.

(e) Costs incurred in connection with proceedings described in paragraph (b) of this section, which are not made unallowable by that subsection, may be allowed but only to the extent that:
(1) The costs are reasonable and necessary in relation to the administration of the financial assistance award and activities required to deal with the proceeding and the underlying cause of action;
(2) Payment of the reasonable, necessary, allocable and otherwise allowable costs incurred is not prohibited by any other provision(s) of the financial assistance award;
(3) The costs are not recovered from the Federal Government or a third party, either directly as a result of the proceeding or otherwise; and,
(4) An authorized BPA official must determine the percentage of costs allowed considering the complexity of litigation, generally accepted principles governing the award of legal fees in civil actions involving the United States, and such other factors as may be appropriate. Such percentage must not exceed 80 percent. However, if an agreement reached under paragraph (c) of this section has explicitly considered this 80 percent limitation and permitted a higher percentage, then the full amount of costs resulting from that agreement are allowable.

(f) Costs incurred by the recipient in connection with the defense of suits brought by its employees or ex-employees under section 2 of the Major Fraud Act of 1988 (18 U.S.C. 1031), including the cost of all relief necessary to make such employee whole, where the recipient was found liable or settled, are unallowable.

(g) Costs of prosecution of claims against the Federal Government, including appeals of final BPA decisions, are unallowable.

(h) Costs of legal, accounting, and consultant services, and related costs, incurred in connection with patent infringement litigation, are unallowable unless otherwise provided for in the financial assistance award.

(i) Costs which may be unallowable under this section, including directly associated costs, must be segregated and accounted for separately. During the pendency of any proceeding covered by paragraphs (b) and (f) of this section, BPA must generally withhold payment of such costs. However, if in its best interests, BPA may provide for conditional payment upon provision of adequate security, or other adequate assurance, and agreement to repay all unallowable costs, plus interest, if the costs are subsequently determined to be unallowable.

5.436 Depreciation

(a) Depreciation is the method for allocating the cost of fixed assets to periods benefitting from asset use. The recipient may be compensated for the use of its buildings, capital improvements, equipment, and software projects capitalized in accordance with GAAP, provided that they are used, needed in the recipient's activities, and properly allocated to financial assistance awards. Such compensation must be made by computing depreciation.

(b) Depreciation is computed applying the following rules. The computation of depreciation must be based on the acquisition cost of the assets involved. For an asset donated to the recipient by a third party, its fair market value at the time of the donation must be considered as the acquisition cost. Such assets may be depreciated or claimed as matching but not both. For the purpose of computing depreciation, the acquisition cost will exclude:
  (1) The cost of land;
  (2) Any portion of the cost of buildings and equipment borne by or donated by BPA, irrespective of where title was originally vested or where it is presently located;
  (3) Any portion of the cost of buildings and equipment contributed by or for the recipient where law or agreement prohibits recovery; and
  (4) Any asset acquired solely for the performance of a non-financial assistance award.

(c) When computing depreciation charges, the following must be observed:
  (1) The period of useful service or useful life established in each case for usable capital assets must take into consideration such factors as type of construction, nature of the equipment, technological developments in the particular area, historical data, and the renewal and replacement policies followed for the individual items or classes of assets involved.
  (2) The depreciation method used to charge the cost of an asset (or group of assets) to accounting periods must reflect the pattern of consumption of the asset during its useful life. In the absence of clear evidence indicating that the expected consumption of the asset will be significantly greater in the early portions than in the later portions of its useful life, the straight-line method must be presumed to be the appropriate method. Depreciation methods once used may not be changed unless approved in advance by the cognizant agency. The depreciation methods used to calculate the depreciation amounts for indirect (F&A) rate purposes must be the same methods used by the recipient for its financial statements.
  (3) The entire building, including the shell and all components, may be treated as a single asset and depreciated over a single useful life. A building may also be divided into multiple components. Each component item may then be depreciated over its estimated useful life. The building components must be grouped into three general components of a building: building shell (including construction and design costs), building services systems (e.g., elevators, HVAC, plumbing system and heating and air-conditioning system) and fixed equipment (e.g., sterilizers, casework, fume hoods, cold rooms and glassware/washers). In exceptional cases, the cognizant agency may authorize a recipient to use more than these three groupings. When a recipient elects to depreciate its buildings by its components, the same depreciation methods must be used for indirect (F&A) purposes and financial statements purposes, as described in paragraphs (d)(1) and (2) of this section.
  (4) No depreciation may be allowed on any assets that have outlived their depreciable lives.
  (5) Where the depreciation method is introduced to replace the use allowance method, depreciation must be computed as if the asset had been depreciated over its entire life (i.e., from the date the asset was acquired and ready for use to the date of disposal or withdrawal from service). The total amount of use allowance and depreciation for an asset (including imputed depreciation applicable to periods prior to the conversion from the use allowance method as well as depreciation after the conversion) may not exceed the total acquisition cost of the asset.

(d) Charges for depreciation must be supported by adequate property records, and physical inventories must be taken at least once every two years to ensure that the assets exist and are usable, used, and needed. Statistical sampling techniques may be used in taking these inventories. In addition, adequate depreciation records showing the amount of depreciation taken each period must also be maintained.

5.437 Employee health and welfare costs

(a) Costs incurred in accordance with the recipient's documented policies for the improvement of working conditions, employer-employee relations, employee health, and employee performance are allowable.

(b) Such costs will be equitably apportioned to all activities of the recipient. Income generated from any of these activities will be credited to the cost thereof unless such income has been irrevocably sent to employee welfare organizations.

(c) Losses resulting from operating food services are allowable only if the recipient's objective is to operate such services on a break-even basis. Losses sustained because of operating objectives other than the above are allowable only:
  (1) Where the recipient can demonstrate unusual circumstances; and
  (2) With the approval of the cognizant agency for indirect costs.

5.438 Entertainment costs

Costs of entertainment, including amusement, diversion, and social activities and any associated costs are unallowable, except where specific costs that might otherwise be considered entertainment have a programmatic purpose and are authorized either in the approved budget for the financial assistance award or with prior written approval of BPA.

5.439 Equipment and other capital expenditures

(a) The following rules of allowability must apply to equipment and other capital expenditures:
  (1) Capital expenditures for general purpose equipment, buildings, and land are unallowable as direct costs, except with the prior written approval of BPA or the pass-through entity.
  (2) Capital expenditures for special purpose equipment are allowable as direct costs, provided that items with a unit cost of $10,000 or more have the prior written approval of BPA or the pass-through entity.
  (3) Capital expenditures for improvements to land, buildings, or equipment which materially increase their value or useful life are unallowable as a direct cost except with the prior written approval of BPA or the pass-through entity. See 5.436 Depreciation, for rules on the allowability of depreciation on buildings, capital improvements, and equipment. See also 5.465 Rental costs of real property and equipment.
  (4) When approved as a direct cost pursuant to paragraphs (a)(1) through (3) of this section, capital expenditures will be charged in the period in which the expenditure is incurred, or as otherwise determined appropriate and negotiated with BPA.
  (5) The unamortized portion of any equipment written off as a result of a change in capitalization levels may be recovered by continuing to claim the otherwise allowable depreciation on the equipment, or by amortizing the amount to be written off over a period of years negotiated with the Federal cognizant agency for indirect cost.
  (6) Cost of equipment disposal. If the recipient is instructed by BPA to otherwise dispose of or transfer the equipment the costs of such disposal or transfer are allowable.
  (7) Equipment and other capital expenditures are unallowable as indirect costs. See 5.436 Depreciation.

5.440 Exchange rates

(a) Cost increases for fluctuations in exchange rates are allowable costs subject to the availability of funding. Prior approval of exchange rate fluctuations is required only when the change results in the need for additional Federal funding, or the increased costs result in the need to significantly

reduce the scope of the project. BPA must, however, ensure that adequate funds are available to cover currency fluctuations in order to avoid a violation of the Anti-Deficiency Act.

(b) The recipient is required to make reviews of local currency gains to determine the need for additional Federal funding before the expiration date of the financial assistance award. Subsequent adjustments for currency increases may be allowable only when the recipient provides BPA with adequate source documentation from a commonly used source in effect at the time the expense was made, and to the extent that sufficient Federal funds are available.

5.441 Fines, penalties, damages and other settlements

Costs resulting from recipient violations of, alleged violations of, or failure to comply with, Federal, state, tribal, local or foreign laws and regulations are unallowable, except when incurred as a result of compliance with specific provisions of the financial assistance award, or with prior written approval of BPA. See also 5.435 Defense and prosecution of criminal and civil proceedings, claims, appeals and patent infringements.

5.442 Fund raising and investment management costs

(a) Costs of organized fund raising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred to raise capital or obtain contributions are unallowable. Fund raising costs for the purposes of meeting the Federal program objectives are allowable with prior written approval from BPA. Proposal costs are covered in 5.460 Proposal costs.

(b) Costs of investment counsel and staff and similar expenses incurred to enhance income from investments are unallowable except when associated with investments covering pension, self-insurance, or other funds which include Federal participation allowed by this part.

(c) Costs related to the physical custody and control of monies and securities are allowable.

(d) Both allowable and unallowable fund raising and investment activities must be allocated as an appropriate share of indirect costs under the conditions described in 5.413 Direct costs.

5.443 Gains and losses on disposition of depreciable assets

(a) Gains and losses on the sale, retirement, or other disposition of depreciable property must be included in the year in which they occur as credits or charges to the asset cost grouping(s) in which the property was included. The amount of the gain or loss to be included as a credit or charge to the appropriate asset cost grouping(s) is the difference between the amount realized on the property and the undepreciated basis of the property.

(b) Gains and losses from the disposition of depreciable property must not be recognized as a separate credit or charge under the following conditions:
  (1) The gain or loss is processed through a depreciation account and is reflected in the depreciation allowable under 5.436 Depreciation and 5.439 Equipment and other capital expenditures.
  (2) The property is given in exchange as part of the purchase price of a similar item and the gain or loss is taken into account in determining the depreciation cost basis of the new item.
  (3) A loss results from the failure to maintain permissible insurance, except as otherwise provided in §200.447 Insurance and indemnification.
  (4) Compensation for the use of the property was provided through use allowances in lieu of depreciation.

(5) Gains and losses arising from mass or extraordinary sales, retirements, or other dispositions must be considered on a case-by-case basis.

(c) Gains or losses of any nature arising from the sale or exchange of property other than the property covered in paragraph (a) of this section, e.g., land, must be excluded in computing financial assistance award costs.

(d) When assets acquired with Federal funds, in part or wholly, are disposed of, the distribution of the proceeds must be made in accordance with 4.310 Insurance Coverage through 4.316 Property trust relationship.

5.444 General costs of government

(a) For states, local governments, and Indian Tribes, the general costs of government are unallowable (except as provided in 5.474 Travel costs). Unallowable costs include:
(1) Salaries and expenses of the Office of the Governor of a state or the chief executive of a local government or the chief executive of an Indian tribe;
(2) Salaries and other expenses of a state legislature, tribal council, or similar local governmental body, such as a county supervisor, city council, school board, etc., whether incurred for purposes of legislation or executive direction;
(3) Costs of the judicial branch of a government;
(4) Costs of prosecutorial activities unless treated as a direct cost to a specific program if authorized by statute or regulation (however, this does not preclude the allowability of other legal activities of the Attorney General as described in 5.435 Defense and prosecution of criminal and civil proceedings, claims, appeals and patent infringements); and
(5) Costs of other general types of government services normally provided to the general public, such as fire and police, unless provided for as a direct cost under a program statute or regulation.

(b) For Indian tribes and Councils of Governments (COGs) up to 50% of salaries and expenses directly attributable to managing and operating Federal programs by the chief executive and his or her staff can be included in the indirect cost calculation without documentation.

5.445 Goods or services for personal use

(a) Costs of goods or services for personal use of the recipient's employees are unallowable regardless of whether the cost is reported as taxable income to the employees.

(b) Costs of housing (e.g., depreciation, maintenance, utilities, furnishings, rent), housing allowances and personal living expenses are only allowable as direct costs regardless of whether reported as taxable income to the employees. In addition, to be allowable direct costs must be approved in advance by a BPA.

5.446 Idle facilities and idle capacity

(a) As used in this section the following terms have the meanings set forth in this section:
(1) Facilities means land and buildings or any portion thereof, equipment individually or collectively, or any other tangible capital asset, wherever located, and whether owned or leased by the recipient.
(2) Idle facilities means completely unused facilities that are excess to the recipient's current needs.
(3) Idle capacity means the unused capacity of partially used facilities. It is the difference between:

(i) That which a facility could achieve under 100 percent operating time on a one-shift basis, less operating interruptions resulting from time lost for repairs, setups, unsatisfactory materials, and other normal delays and;
(ii) The extent to which the facility was actually used to meet demands during the accounting period. A multi-shift basis should be used if it can be shown that this amount of usage would normally be expected for the type of facility involved.

(4) Cost of idle facilities or idle capacity means costs such as maintenance, repair, housing, rent, and other related costs, e.g., insurance, interest, and depreciation. These costs could include the costs of idle public safety emergency facilities, telecommunications, or information technology system capacity that is built to withstand major fluctuations in load, e.g., consolidated data centers.

(b) The costs of idle facilities are unallowable except to the extent that:
(1) They are necessary to meet workload requirements which may fluctuate and are allocated appropriately to all benefiting programs; or
(2) Although not necessary to meet fluctuations in workload, they were necessary when acquired and are now idle because of changes in program requirements, efforts to achieve more economical operations, reorganization, termination, or other causes which could not have been reasonably foreseen. Under the exception stated in this subsection, costs of idle facilities are allowable for a reasonable period of time, ordinarily not to exceed one year, depending on the initiative taken to use, lease, or dispose of such facilities.
(3) The costs of idle capacity are normal costs of doing business and are a factor in the normal fluctuations of usage or indirect cost rates from period to period. Such costs are allowable, provided that the capacity is reasonably anticipated to be necessary to carry out the purpose of the financial assistance award or was originally reasonable and is not subject to reduction or elimination by use on other financial assistance awards, subletting, renting, or sale, in accordance with sound business, economic, or security practices. Widespread idle capacity throughout an entire facility or among a group of assets having substantially the same function may be considered idle facilities.

5.447 Insurance and indemnification

(a) Costs of insurance required or approved and maintained, pursuant to the financial assistance award, are allowable.

(b) Costs of other insurance in connection with the general conduct of activities are allowable subject to the following limitations:
(1) Types and extent and cost of coverage are in accordance with the recipient's policy and sound business practice.
(2) Costs of insurance or of contributions to any reserve covering the risk of loss of, or damage to, BPA property are unallowable except to the extent that BPA has specifically required or approved such costs.
(3) Costs allowed for business interruption or other similar insurance must exclude coverage of management fees.
(4) Costs of insurance on the lives of trustees, officers, or other employees holding positions of similar responsibilities are allowable only to the extent that the insurance represents additional compensation (see 5.431 Compensation—fringe benefits). The cost of such insurance when the recipient is identified as the beneficiary is unallowable.
(5) Insurance against defects. Costs of insurance with respect to any costs incurred to correct defects in the recipient's materials or workmanship are unallowable.
(6) Medical liability (malpractice) insurance. Medical liability insurance is an allowable cost of Federal research programs only to the extent that the Federal research programs involve

human subjects or training of participants in research techniques. Medical liability insurance costs must be treated as a direct cost and must be assigned to individual projects based on the manner in which the insurer allocates the risk to the population covered by the insurance.

(c) Actual losses which could have been covered by permissible insurance (through a self-insurance program or otherwise) are unallowable, unless expressly provided for in the financial assistance award. However, costs incurred because of losses not covered under nominal deductible insurance coverage provided in keeping with sound management practice, and minor losses not covered by insurance, such as spoilage, breakage, and disappearance of small hand tools, which occur in the ordinary course of operations, are allowable.

(d) Contributions to a reserve for certain self-insurance programs including workers' compensation, unemployment compensation, and severance pay are allowable subject to the following provisions:
(1) The type of coverage and the extent of coverage and the rates and premiums would have been allowed had insurance (including reinsurance) been purchased to cover the risks. However, provision for known or reasonably estimated self-insured liabilities, which do not become payable for more than one year after the provision is made, must not exceed the discounted present value of the liability. The rate used for discounting the liability must be determined by giving consideration to such factors as the recipient's settlement rate for those liabilities and its investment rate of return.
(2) Earnings or investment income on reserves must be credited to those reserves.
(3)
(i) Contributions to reserves must be based on sound actuarial principles using historical experience and reasonable assumptions. Reserve levels must be analyzed and updated at least biennially for each major risk being insured and take into account any reinsurance, coinsurance, etc. Reserve levels related to employee-related coverages will normally be limited to the value of claims:
(A) Submitted and adjudicated but not paid;
(B) Submitted but not adjudicated; and
(C) Incurred but not submitted.
(ii) Reserve levels in excess of the amounts based on the above must be identified and justified in the cost allocation plan or indirect cost rate proposal.
(4) Accounting records, actuarial studies, and cost allocations (or billings) must recognize any significant differences due to types of insured risk and losses generated by the various insured activities or agencies of the recipient. If individual departments or agencies of the recipient experience significantly different levels of claims for a particular risk, those differences are to be recognized by the use of separate allocations or other techniques resulting in an equitable allocation.
(5) Whenever funds are transferred from a self-insurance reserve to other accounts (e.g., general fund or unrestricted account), refunds must be made to the BPA for its share of funds transferred, including earned or imputed interest from the date of transfer and debt interest, if applicable, chargeable in accordance with applicable Federal cognizant agency for indirect cost, claims collection regulations.

(e) Insurance refunds must be credited against insurance costs in the year the refund is received.

(f) Indemnification includes securing the recipient against liabilities to third persons and other losses not compensated by insurance or otherwise. BPA is obligated to indemnify the recipient only to the extent expressly provided for in the financial assistance award, except as provided in paragraph (c) of this section.

5.448 Intellectual property

(a) *Patent costs.*
  (1) The following costs related to securing patents and copyrights are allowable:
    (i) Costs of preparing disclosures, reports, and other documents required by the financial assistance award and of searching the art to the extent necessary to make such disclosures;
    (ii) Costs of preparing documents and any other patent costs in connection with the filing and prosecution of a United States patent application where title or royalty-free license is required by the Federal Government to be conveyed to the Federal Government; and
    (iii) General counseling services relating to patent and copyright matters, such as advice on patent and copyright laws, regulations, clauses, and employee intellectual property agreements (See also 5.459 Professional service costs).
  (2) The following costs related to securing patents and copyrights are unallowable:
    (i) Costs of preparing disclosures, reports, and other documents, and of searching the art to make disclosures not required by the financial assistance award;
    (ii) Costs in connection with filing and prosecuting any foreign patent application, or any United States patent application, where the financial assistance award does not require conveying title or a royalty-free license to the Federal Government.

(b) *Royalties and other costs for use of patents and copyrights*
  (1) Royalties on a patent or copyright or amortization of the cost of acquiring by purchase a copyright, patent, or rights thereto, necessary for the proper performance of the financial assistance award are allowable unless:
    (i) The Federal Government already has a license or the right to free use of the patent or copyright.
    (ii) The patent or copyright has been adjudicated to be invalid, or has been administratively determined to be invalid.
    (iii) The patent or copyright is considered to be unenforceable.
    (iv) The patent or copyright is expired.
  (2) Special care should be exercised in determining reasonableness where the royalties may have been arrived at as a result of less-than-arm's-length bargaining, such as:
    (i) Royalties paid to persons, including corporations, affiliated with the recipient.
    (ii) Royalties paid to unaffiliated parties, including corporations, under an agreement entered into in contemplation that a financial assistance award would be made.
    (iii) Royalties paid under an agreement entered into after a financial assistance award is made to a recipient.
  (3) In any case involving a patent or copyright formerly owned by the recipient, the amount of royalty allowed must not exceed the cost which would have been allowed had the recipient retained title thereto.

5.449 Interest

(a) *General.* Costs incurred for interest on borrowed capital, temporary use of endowment funds, or the use of the recipient's own funds, however represented, are unallowable. Financing costs (including interest) to acquire, construct, or replace capital assets are allowable, subject to the conditions in this section.

(b)
  (1) An asset cost includes (as applicable) acquisition costs, construction costs, and other costs capitalized in accordance with GAAP.

(2) For recipient fiscal years beginning on or after January 1, 2016, intangible assets include patents and computer software. For software development projects, only interest attributable to the portion of the project costs capitalized in accordance with GAAP is allowable.

(c) *Conditions for all recipients.*
(1) The recipient uses the capital assets in support of financial assistance awards;
(2) The allowable asset costs to acquire facilities and equipment are limited to a fair market value available to the recipient from an unrelated (arm's length) third party.
(3) The recipient obtains the financing via an arm's-length transaction (that is, a transaction with an unrelated third party); or claims reimbursement of actual interest cost at a rate available via such a transaction.
(4) The recipient limits claims for BPA reimbursement of interest costs to the least expensive alternative. For example, a capital lease may be determined less costly than purchasing through debt financing, in which case reimbursement must be limited to the amount of interest determined if leasing had been used.
(5) The recipient expenses or capitalizes allowable interest cost in accordance with GAAP.
(6) Earnings generated by the investment of borrowed funds pending their disbursement for the asset costs are used to offset the current period's allowable interest cost, whether that cost is expensed or capitalized. Earnings subject to being reported to the Federal Internal Revenue Service under arbitrage requirements are excludable.
(7) The following conditions must apply to debt arrangements over $1 million to purchase or construct facilities, unless the recipient makes an initial equity contribution to the purchase of 25 percent or more. For this purpose, “initial equity contribution” means the amount or value of contributions made by the recipient for the acquisition of facilities prior to occupancy.
(i) The recipient must reduce claims for reimbursement of interest cost by an amount equal to imputed interest earnings on excess cash flow attributable to the portion of the facility used for financial assistance awards.
(ii) The recipient must impute interest on excess cash flow as follows:
(A) Annually, the recipient must prepare a cumulative (from the inception of the project) report of monthly cash inflows and outflows, regardless of the funding source. For this purpose, inflows consist of BPA reimbursement for depreciation, amortization of capitalized construction interest, and annual interest cost. Outflows consist of initial equity contributions, debt principal payments (less the pro-rata share attributable to the cost of land), and interest payments.
(B) To compute monthly cash inflows and outflows, the recipient must divide the annual amounts determined in step (i) by the number of months in the year (usually 12) that the building is in service.
(C) For any month in which cumulative cash inflows exceed cumulative outflows, interest must be calculated on the excess inflows for that month and be treated as a reduction to allowable interest cost. The rate of interest to be used must be the three-month Treasury bill closing rate as of the last business day of that month.
(8) Interest attributable to a fully depreciated asset is unallowable.

(d) Additional conditions for states, local governments and Indian tribes. For costs to be allowable, the recipient must have incurred the interest costs for buildings after October 1, 1980, or for land and equipment after September 1, 1995.
(1) The requirement to offset interest earned on borrowed funds against current allowable interest cost (paragraph (c)(5), above) also applies to earnings on debt service reserve funds.
(2) The recipient will negotiate the amount of allowable interest cost related to the acquisition of facilities with asset costs of $1 million or more, as outlined in paragraph (c)(7) of this section.

For this purpose, a recipient must consider only cash inflows and outflows attributable to that portion of the real property used for financial assistance awards.

(e) Additional conditions for IHEs. For costs to be allowable, the IHE must have incurred the interest costs after July 1, 1982, in connection with acquisitions of capital assets that occurred after that date.

(f) Additional condition for nonprofit organizations. For costs to be allowable, the nonprofit organization incurred the interest costs after September 29, 1995, in connection with acquisitions of capital assets that occurred after that date.

(g) The interest allowability provisions of this section do not apply to a nonprofit organization subject to "full coverage" under the Cost Accounting Standards (CAS), as defined at 48 CFR 9903.201-2(a). The recipient's Financial assistance awards are instead subject to CAS 414 (48 CFR 9904.414), "Cost of Money as an Element of the Cost of Facilities Capital", and CAS 417 (48 CFR 9904.417), "Cost of Money as an Element of the Cost of Capital Assets Under Construction".

5.450 Lobbying

(a) The cost of certain influencing activities associated with obtaining grants, contracts, cooperative agreements, or loans is an unallowable cost. Lobbying with respect to certain grants, contracts, cooperative agreements, and loans is governed by relevant statutes, including among others, the provisions of 31 U.S.C. 1352, as well as the common rule, "New Restrictions on Lobbying" published at 55 FR 6736 (February 26, 1990), including definitions, and the Office of Management and Budget "Governmentwide Guidance for New Restrictions on Lobbying" and notices published at 54 FR 52306 (December 20, 1989), 55 FR 24540 (June 15, 1990), 57 FR 1772 (January 15, 1992), and 61 FR 1412 (January 19, 1996).

(b) Executive lobbying costs. Costs incurred in attempting to improperly influence either directly or indirectly, an employee or officer of the executive branch of the Federal Government to give consideration or to act regarding a financial assistance award or a regulatory matter are unallowable. Improper influence means any influence that induces or tends to induce a Federal employee or officer to give consideration or to act regarding a financial assistance award or regulatory matter on any basis other than the merits of the matter.

(c) In addition to the above, the following restrictions are applicable to nonprofit organizations and IHEs:
  (1) Costs associated with the following activities are unallowable:
    (i) Attempts to influence the outcomes of any Federal, state, or local election, referendum, initiative, or similar procedure, through in-kind or cash contributions, endorsements, publicity, or similar activity;
    (ii) Establishing, administering, contributing to, or paying the expenses of a political party, campaign, political action committee, or other organization established for the purpose of influencing the outcomes of elections in the United States;
    (iii) Any attempt to influence:
      (A) The introduction of Federal or state legislation;
      (B) The enactment or modification of any pending Federal or state legislation through communication with any member or employee of the Congress or state legislature (including efforts to influence state or local officials to engage in similar lobbying activity);
      (C) The enactment or modification of any pending Federal or state legislation by preparing, distributing, or using publicity or propaganda, or by urging members of the general public, or any segment thereof, to contribute to or participate in any mass

demonstration, march, rally, fund raising drive, lobbying campaign or letter writing or telephone campaign; or

(D) Any government official or employee in connection with a decision to sign or veto enrolled legislation;

(iv) Legislative liaison activities, including attendance at legislative sessions or committee hearings, gathering information regarding legislation, and analyzing the effect of legislation, when such activities are carried on in support of or in knowing preparation for an effort to engage in unallowable lobbying.

(2) The following activities are excepted from the coverage of paragraph (c)(1) of this section:

(i) Technical and factual presentations on topics directly related to the performance of a grant, contract, or other agreement (through hearing testimony, statements, or letters to the Congress or a state legislature, or subdivision, member, or cognizant staff member thereof), in response to a documented request (including a Congressional Record notice requesting testimony or statements for the record at a regularly scheduled hearing) made by the recipient's member of congress, legislative body or a subdivision, or a cognizant staff member thereof, provided such information is readily obtainable and can be readily put in deliverable form, and further provided that costs under this section for travel, lodging or meals are unallowable unless incurred to offer testimony at a regularly scheduled Congressional hearing pursuant to a written request for such presentation made by the Chairman or Ranking Minority Member of the Committee or Subcommittee conducting such hearings;

(ii) Any lobbying made unallowable by paragraph (c)(1)(iii) of this section to influence state legislation in order to directly reduce the cost, or to avoid material impairment of the recipient's authority to perform the grant, contract, or other agreement; or

(iii) Any activity specifically authorized by statute to be undertaken with funds from the financial assistance award.

(iv) Any activity excepted from the definitions of “lobbying” or “influencing legislation” by the Internal Revenue Code provisions that require nonprofit organizations to limit their participation in direct and “grass roots” lobbying activities in order to retain their charitable deduction status and avoid punitive excise taxes, I.R.C. §§501(c)(3), 501(h), 4911(a), including:

(A) Nonpartisan analysis, study, or research reports;

(B) Examinations and discussions of broad social, economic, and similar problems; and

(C) Information provided upon request by a legislator for technical advice and assistance, as defined by I.R.C. §4911(d)(2) and 26 CFR 56.4911-2(c)(1)-(c)(3).

(v) When a recipient seeks reimbursement for indirect (F&A) costs, total lobbying costs must be separately identified in the indirect (F&A) cost rate proposal, and thereafter treated as other unallowable activity costs in accordance with the procedures of 5.413 Direct costs.

(vi) The recipient must submit as part of its annual indirect (F&A) cost rate proposal a certification that the requirements and standards of this section have been complied with. (See also 5.415 Required certifications.)

(vii)

(A) Time logs, calendars, or similar records are not required to be created for purposes of complying with the record keeping requirements in 4.302 Financial management with respect to lobbying costs during any particular calendar month when:

(1) The employee engages in lobbying (as defined in paragraphs (c)(1) and (c)(2) of this section) 25 percent or less of the employee's compensated hours of employment during that calendar month; and

(2) Within the preceding 5-year period, the recipient has not materially misstated allowable or unallowable costs of any nature, including legislative lobbying costs.

(B) When conditions in paragraph (c)(2)(vii)(A)(*1*) and (*2*) of this section are met, recipients are not required to establish records to support the allowability of claimed costs in addition to records already required or maintained. Also, when conditions in paragraphs (c)(2)(vii)(A)(*1*) and (*2*) of this section are met, the absence of time logs, calendars, or similar records will not serve as a basis for disallowing costs by contesting estimates of lobbying time spent by employees during a calendar month.

(viii) BPA must establish procedures for resolving in advance, in consultation with OMB, any significant questions or disagreements concerning the interpretation or application of this section. Any such advance resolutions must be binding in any subsequent settlements, audits, or investigations with respect to that grant or contract for purposes of interpretation of this part, provided, however, that this must not be construed to prevent a contractor or recipient from contesting the lawfulness of such a determination.

5.451 Losses on other awards or contracts

Any excess of costs over income under any other award or contract of any nature is unallowable. This includes, but is not limited to, the recipient's contributed portion by reason of cost-sharing agreements or any under-recoveries through negotiation of flat amounts for indirect (F&A) costs. Also, any excess of costs over authorized funding levels transferred from any award or contract to another award or contract is unallowable. All losses are not allowable indirect (F&A) costs and are required to be included in the appropriate indirect cost rate base for allocation of indirect costs.

5.452 Maintenance and repair costs

Costs incurred for utilities, insurance, security, necessary maintenance, janitorial services, repair, or upkeep of buildings and equipment (including BPA property unless otherwise provided for) which neither add to the permanent value of the property nor appreciably prolong its intended life, but keep it in an efficient operating condition, are allowable. Costs incurred for improvements which add to the permanent value of the buildings and equipment or appreciably prolong their intended life must be treated as capital expenditures (see 5.439 Equipment and other capital expenditures). These costs are only allowable to the extent not paid through rental or other agreements.

5.453 Materials and supplies costs, including costs of computing devices

(a) Costs incurred for materials, supplies, and fabricated parts necessary to carry out a financial assistance award are allowable.

(b) Purchased materials and supplies must be charged at their actual prices, net of applicable credits. Withdrawals from general stores or stockrooms must be charged at their actual net cost under any recognized method of pricing inventory withdrawals, consistently applied. Incoming transportation charges are a proper part of materials and supplies costs.

(c) Materials and supplies used for the performance of a financial assistance award may be charged as direct costs. In the specific case of computing devices, charging as direct costs is allowable for devices that are essential and allocable, but not solely dedicated, to the performance of a financial assistance award.

(d) Where federally-donated or furnished materials are used in performing the financial assistance award, such materials will be used without charge.

5.454 Memberships, subscriptions, and professional activity costs

(a) Costs of the recipient's membership in business, technical, and professional organizations are allowable.

(b) Costs of the recipient's subscriptions to business, professional, and technical periodicals are allowable.

(c) Costs of membership in any civic or community organization are allowable with prior approval by BPA or the pass-through entity.

(d) Costs of membership in any country club or social or dining club or organization are unallowable.

(e) Costs of membership in organizations whose primary purpose is lobbying are unallowable. See also 5.450 Lobbying.

5.455 Organization costs

Costs such as incorporation fees, brokers' fees, fees to promoters, organizers or management consultants, attorneys, accountants, or investment counselor, whether or not employees of the recipient in connection with establishment or reorganization of an organization, are unallowable except with prior approval of BPA.

5.456 Participant support costs

Participant support costs are allowable with the prior approval of BPA.

5.457 Plant and security costs

Necessary and reasonable expenses incurred for protection and security of facilities, personnel, and work products are allowable. Such costs include, but are not limited to, wages and uniforms of personnel engaged in security activities; equipment; barriers; protective (non-military) gear, devices, and equipment; contractual security services; and consultants. Capital expenditures for plant security purposes are subject to 5.439 Equipment and other capital expenditures.

5.458 Pre-award costs

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

5.459 Professional service costs

(a) Costs of professional and consultant services rendered by persons who are members of a particular profession or possess a special skill, and who are not officers or employees of the recipient, are allowable, subject to paragraphs (b) and (c) when reasonable in relation to the services rendered and when not contingent upon recovery of the costs from BPA. In addition, legal and related services are limited under 5.435 Defense and prosecution of criminal and civil proceedings, claims, appeals and patent infringements.

(b) In determining the allowability of costs in a particular case, no single factor or any special combination of factors is necessarily determinative. However, the following factors are relevant:
(1) The nature and scope of the service rendered in relation to the service required.

(2) The necessity of contracting for the service, considering the recipient's capability in the particular area.
(3) The past pattern of such costs, particularly in the years prior to financial assistance awards.
(4) The impact of financial assistance awards on the recipient's business (i.e., what new problems have arisen).
(5) Whether the proportion of Federal work to the recipient's total business is such as to influence the recipient in favor of incurring the cost, particularly where the services rendered are not of a continuing nature and have little relationship to work under financial assistance awards.
(6) Whether the service can be performed more economically by direct employment rather than contracting.
(7) The qualifications of the individual or concern rendering the service and the customary fees charged, especially on non-federally funded activities.
(8) Adequacy of the contractual agreement for the service (e.g., description of the service, estimate of time required, rate of compensation, and termination provisions).

(c) In addition to the factors in paragraph (b) of this section, to be allowable, retainer fees must be supported by evidence of bona fide services available or rendered.

5.460 Proposal costs

Proposal costs are the costs of preparing bids, proposals, or applications on potential financial and non-financial assistance awards or projects, including the development of data necessary to support the recipient's bids or proposals. Proposal costs of the current accounting period of both successful and unsuccessful bids and proposals normally should be treated as indirect (F&A) costs and allocated currently to all activities of the recipient. No proposal costs of past accounting periods will be allocable to the current period.

5.461 Publication and printing costs

(a) Publication costs for electronic and print media, including distribution, promotion, and general handling are allowable. If these costs are not identifiable with a particular cost objective, they should be allocated as indirect costs to all benefiting activities of the recipient.

(b) Page charges for professional journal publications are allowable where:
(1) The publications report work supported by the Federal Government; and
(2) The charges are levied impartially on all items published by the journal, whether or not under a financial assistance award.
(3) The recipient may charge the financial assistance award before closeout for the costs of publication or sharing of research results if the costs are not incurred during the period of performance of the financial assistance award.

5.462 Rearrangement and reconversion costs

(a) Costs incurred for ordinary and normal rearrangement and alteration of facilities are allowable as indirect costs. Special arrangements and alterations costs incurred specifically for a financial assistance award are allowable as a direct cost with the prior approval of BPA or the pass-through entity.

(b) Costs incurred in the restoration or rehabilitation of the recipient's facilities to approximately the same condition existing immediately prior to commencement of financial assistance awards, less costs related to normal wear and tear, are allowable.

5.463 Recruiting costs

(a) Subject to paragraphs (b) and (c) of this section, and provided that the size of the staff recruited and maintained is in keeping with workload requirements, costs of “help wanted” advertising, operating costs of an employment office necessary to secure and maintain an adequate staff, costs of operating an aptitude and educational testing program, travel costs of employees while engaged in recruiting personnel, travel costs of applicants for interviews for prospective employment, and relocation costs incurred incident to recruitment of new employees, are allowable to the extent that such costs are incurred pursuant to the recipient's standard recruitment program. Where the recipient uses employment agencies, costs not in excess of standard commercial rates for such services are allowable.

(b) Special emoluments, fringe benefits, and salary allowances incurred to attract professional personnel that do not meet the test of reasonableness or do not conform with the established practices of the recipient, are unallowable.

(c) Where relocation costs incurred incident to recruitment of a new employee have been funded in whole or in part to a financial assistance award, and the newly hired employee resigns for reasons within the employee's control within 12 months after hire, the recipient will be required to refund or credit BPA’s share of such relocation costs to BPA. See also 5.464 Relocation costs of employees.

(d) Short-term, travel visa costs (as opposed to longer-term, immigration visas) are generally allowable expenses that may be proposed as a direct cost. Since short-term visas are issued for a specific period and purpose, they can be clearly identified as directly connected to work performed on a financial assistance award. For these costs to be directly charged to a financial assistance award, they must:
   (1) Be critical and necessary for the conduct of the project;
   (2) Be allowable under the applicable cost principles;
   (3) Be consistent with the recipient's cost accounting practices and recipient policy; and
   (4) Meet the definition of “direct cost” as described in the applicable cost principles.

5.464 Relocation costs of employees

(a) Relocation costs are costs incident to the permanent change of duty assignment (for an indefinite period or for a stated period of not less than 12 months) of an existing employee or upon recruitment of a new employee. Relocation costs are allowable, subject to the limitations described in paragraphs (b), (c), and (d) of this section, provided that:
   (1) The move is for the benefit of the employer.
   (2) Reimbursement to the employee is in accordance with an established written policy consistently followed by the employer.
   (3) The reimbursement does not exceed the employee's actual (or reasonably estimated) expenses.

(b) Allowable relocation costs for current employees are limited to the following:
   (1) The costs of transportation of the employee, members of his or her immediate family and his household, and personal effects to the new location.
   (2) The costs of finding a new home, such as advance trips by employees and spouses to locate living quarters and temporary lodging during the transition period, up to maximum period of 30 calendar days.
   (3) Closing costs, such as brokerage, legal, and appraisal fees, incident to the disposition of the employee's former home. These costs, together with those described in (4), are limited to 8 per cent of the sales price of the employee's former home.

(4) The continuing costs of ownership (for up to six months) of the vacant former home after the settlement or lease date of the employee's new permanent home, such as maintenance of buildings and grounds (exclusive of fixing-up expenses), utilities, taxes, and property insurance.
(5) Other necessary and reasonable expenses normally incident to relocation, such as the costs of canceling an unexpired lease, transportation of personal property, and purchasing insurance against loss of or damages to personal property. The cost of canceling an unexpired lease is limited to three times the monthly rental.

(c) Allowable relocation costs for new employees are limited to those described in paragraphs (b)(1) and (2) of this section. When relocation costs incurred incident to the recruitment of new employees have been charged to a financial assistance award and the employee resigns for reasons within the employee's control within 12 months after hire, the recipient must refund or credit BPA for its share of the cost. However, the costs of travel to an overseas location must be considered travel costs in accordance with 5.474 Travel costs, and not 5.464 Relocation costs of employees, for the purpose of this paragraph if dependents are not permitted at the location for any reason and the costs do not include costs of transporting household goods.

(d) The following costs related to relocation are unallowable:
(1) Fees and other costs associated with acquiring a new home.
(2) A loss on the sale of a former home.
(3) Continuing mortgage principal and interest payments on a home being sold.
(4) Income taxes paid by an employee related to reimbursed relocation costs.

5.465 Rental costs of real property and equipment

(a) Subject to the limitations described in paragraphs (b) through (d) of this section, rental costs are allowable to the extent that the rates are reasonable in light of such factors as: rental costs of comparable property, if any; market conditions in the area; alternatives available; and the type, life expectancy, condition, and value of the property leased. Rental arrangements should be reviewed periodically to determine if circumstances have changed and other options are available.

(b) Rental costs under “sale and lease back” arrangements are allowable only up to the amount that would be allowed had the recipient continued to own the property. This amount would include expenses such as depreciation, maintenance, taxes, and insurance.

(c) Rental costs under “less-than-arm's-length” leases are allowable only up to the amount (as explained in paragraph (b) of this section). For this purpose, a less-than-arm's-length lease is one under which one party to the lease agreement is able to control or substantially influence the actions of the other. Such leases include, but are not limited to those between:
(1) Divisions of the recipient;
(2) The recipient under common control through common officers, directors, or members; and
(3) The recipient and a director, trustee, officer, or key employee of the recipient or an immediate family member, either directly or through corporations, trusts, or similar arrangements in which they hold a controlling interest. For example, the recipient may establish a separate corporation for the sole purpose of owning property and leasing it back to the recipient.
(4) Family members include one party with any of the following relationships to another party:
(i) Spouse, and parents thereof;
(ii) Children, and spouses thereof;
(iii) Parents, and spouses thereof;
(iv) Siblings, and spouses thereof;
(v) Grandparents and grandchildren, and spouses thereof;

(vi) Domestic partner and parents thereof, including domestic partners of any individual in 2 through 5 of this definition; and
(vii) Any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.

(5) Rental costs under leases which are required to be treated as capital leases under GAAP are allowable only up to the amount (as explained in paragraph (b) of this section) that would be allowed had the recipient purchased the property on the date the lease agreement was executed. The provisions of GAAP must be used to determine whether a lease is a capital lease. Interest costs related to capital leases are allowable to the extent they meet the criteria in 5.449 Interest. Unallowable costs include amounts paid for profit, management fees, and taxes that would not have been incurred had the recipient purchased the property.

(6) The rental of any property owned by any individuals or entities affiliated with the recipient, to include commercial or residential real estate, for purposes such as the home office workspace is unallowable.

5.466 Scholarships and student aid costs

(a) Costs of scholarships, fellowships, and other programs of student aid at IHEs are allowable only when the purpose of the financial assistance award is to provide training to selected participants and the charge is approved by BPA. However, tuition remission and other forms of compensation paid as, or in lieu of, wages to students performing necessary work are allowable provided that:
(1) The individual is conducting activities necessary to the financial assistance award;
(2) Tuition remission and other support are provided in accordance with established policy of the IHE and consistently provided in a like manner to students in return for similar activities conducted under financial assistance awards as well as other activities; and
(3) During the academic period, the student is enrolled in an advanced degree program at a recipient or affiliated institution and the activities of the student in relation to the financial assistance award are related to the degree program;
(4) The tuition or other payments are reasonable compensation for the work performed and are conditioned explicitly upon the performance of necessary work; and
(5) It is the IHE's practice to similarly compensate students under financial assistance awards as well as other activities.

(b) Charges for tuition remission and other forms of compensation paid to students as, or in lieu of, salaries and wages must be subject to the reporting requirements in 5.430 Compensation—personal services, and must be treated as direct or indirect cost in accordance with the actual work being performed. Tuition remission may be charged on an average rate basis. See also 5.431 Compensation—fringe benefits.

5.467 Selling and marketing costs

Costs of selling and marketing any products or services of the recipient (unless allowed under 5.421 Advertising and public relations.) are unallowable, except as direct costs, with prior approval by BPA when necessary for the performance of the financial assistance award.

5.468 Specialized service facilities

(a) The costs of services provided by highly complex or specialized facilities operated by the recipient, such as computing facilities, wind tunnels, and reactors are allowable, provided the charges for the services meet the conditions of either paragraphs (b) or (c) of this section, and, in addition, take into account any items of income or Federal financing that qualify as applicable credits under 5.406 Applicable credits.

(b) The costs of such services, when material, must be charged directly to applicable awards based on actual usage of the services on the basis of a schedule of rates or established methodology that:
  (1) Does not discriminate between activities under financial assistance awards and other activities of the recipient, including usage by the recipient for internal purposes, and
  (2) Is designed to recover only the aggregate costs of the services. The costs of each service must consist normally of both its direct costs and its allocable share of all indirect (F&A) costs. Rates must be adjusted at least biennially, and must take into consideration over/under applied costs of the previous period(s).

(c) Where the costs incurred for a service are not material, they may be allocated as indirect (F&A) costs.

(d) Under some extraordinary circumstances, where it is in the best interest of BPA and the recipient to establish alternative costing arrangements, such arrangements may be worked out with the Federal cognizant agency for indirect costs.

5.469 Student activity costs

Costs incurred for intramural activities, student publications, student clubs, and other student activities, are unallowable, unless specifically provided for in the financial assistance award.

5.470 Taxes (including Value Added Tax)

(a) For states, local governments and Indian tribes:
  (1) Taxes that a governmental unit is legally required to pay are allowable, except for self-assessed taxes that disproportionately affect Federal programs or changes in tax policies that disproportionately affect Federal programs.
  (2) Gasoline taxes, motor vehicle fees, and other taxes that are in effect user fees for benefits provided to the Federal Government are allowable.
  (3) This provision does not restrict the authority of BPA to identify taxes where Federal participation is inappropriate. Where the identification of the amount of unallowable taxes would require an inordinate amount of effort, the cognizant agency for indirect costs may accept a reasonable approximation thereof.

(b) For nonprofit organizations and IHEs:
  (1) In general, taxes which the recipient is required to pay and which are paid or accrued in accordance with GAAP, and payments made to local governments in lieu of taxes which are commensurate with the local government services received are allowable, except for:
    (i) Taxes from which exemptions are available to the recipient directly or which are available to the recipient based on an exemption afforded the Federal Government and, in the latter case, when BPA makes available the necessary exemption certificates,
    (ii) Special assessments on land which represent capital improvements, and
    (iii) Federal income taxes.
  (2) Any refund of taxes, and any payment to the recipient of interest thereon, which were allowed as financial assistance award costs, will be credited either as a cost reduction or cash refund, as appropriate, to BPA. However, any interest actually paid or credited to a recipient incident to a refund of tax, interest, and penalty will be paid or credited to BPA only to the extent that such interest accrued over the period during which the recipient has been reimbursed by BPA for the taxes, interest, and penalties.

(c) Value Added Tax (VAT) Foreign taxes charged for the purchase of goods or services that a recipient is legally required to pay in country is an allowable expense under financial assistance

awards. Foreign tax refunds or applicable credits under financial assistance awards refer to receipts, or reduction of expenditures, which operate to offset or reduce expense items that are allocable to financial assistance awards as direct or indirect costs. To the extent that such credits accrued or received by the recipient relate to allowable cost, these costs must be credited to BPA either as costs or cash refunds. If the costs are credited back to the financial assistance award, the recipient may reduce the BPA share of costs by the amount of the foreign tax reimbursement, or where financial assistance award has not expired, use the foreign government tax refund for approved activities under the financial assistance award with prior approval of BPA.

5.471 Termination costs

Termination of a financial assistance award generally gives rise to the incurrence of costs, or the need for special treatment of costs, which would not have arisen had the financial assistance award not been terminated. Cost principles covering these items are set forth in this section. They are to be used in conjunction with the other provisions of this part in termination situations.

(a) The cost of items reasonably usable on the recipient's other work must not be allowable unless the recipient submits evidence that it would not retain such items at cost without sustaining a loss. In deciding whether such items are reasonably usable on other work of the recipient, BPA should consider the recipient's plans and orders for current and scheduled activity. Contemporaneous purchases of common items by the recipient must be regarded as evidence that such items are reasonably usable on the recipient's other work. Any acceptance of common items as allocable to the terminated portion of the financial assistance award must be limited to the extent that the quantities of such items on hand, in transit, and on order are in excess of the reasonable quantitative requirements of other work.

(b) If in a particular case, despite all reasonable efforts by the recipient, certain costs cannot be discontinued immediately after the effective date of termination, such costs are generally allowable within the limitations set forth in this part, except that any such costs continuing after termination due to the negligent or willful failure of the recipient to discontinue such costs must be unallowable.

(c) Loss of useful value of special tooling, machinery, and equipment is generally allowable if:
  (1) Such special tooling, special machinery, or equipment is not reasonably capable of use in the other work of the recipient,
  (2) The interest of the Federal Government is protected by transfer of title or by other means deemed appropriate by BPA (see also 4.313 Equipment, paragraph (d), and
  (3) The loss of useful value for any one terminated financial assistance award is limited to that portion of the acquisition cost which bears the same ratio to the total acquisition cost as the terminated portion of the financial assistance award bears to the entire terminated financial assistance award and other financial assistance awards for which the special tooling, machinery, or equipment was acquired.

(d) Rental costs under unexpired leases are generally allowable where clearly shown to have been reasonably necessary for the performance of the terminated financial assistance award less the residual value of such leases, if:
  (1) The amount of such rental claimed does not exceed the reasonable use value of the property leased for the period of the financial assistance award and such further period as may be reasonable, and
  (2) The recipient makes all reasonable efforts to terminate, assign, settle, or otherwise reduce the cost of such lease. There also may be included the cost of alterations of such leased property, provided such alterations were necessary for the performance of the financial assistance award, and of reasonable restoration required by the provisions of the lease.

(e) Settlement expenses including the following are generally allowable:
  (1) Accounting, legal, clerical, and similar costs reasonably necessary for:
    (i) The preparation and presentation to BPA of settlement claims and supporting data with respect to the terminated portion of the financial assistance award, unless the termination is for cause (see Part 4—Post Financial assistance award Requirements, 4.338 Remedies for Noncompliance through 4.342 Effects of Suspension and termination); and
    (ii) The termination and settlement of subawards.
  (2) Reasonable costs for the storage, transportation, protection, and disposition of property provided by BPA or acquired or produced for the financial assistance award.

(f) Claims under subawards, including the allocable portion of claims which are common to the financial assistance award and to other work of the recipient, are generally allowable. An appropriate share of the recipient's indirect costs may be allocated to the amount of settlements with contractors and/or subrecipients, provided that the amount allocated is otherwise consistent with the basic guidelines contained in 5.414 Indirect (F&A) costs. The indirect costs so allocated must exclude the same and similar costs claimed directly or indirectly as settlement expenses.

5.472 Training and education costs

The cost of training and education provided for employee development is allowable.

5.473 Transportation costs

Costs incurred for freight, express, cartage, postage, and other transportation services relating either to goods purchased, in process, or delivered, are allowable. When such costs can readily be identified with the items involved, they may be charged directly as transportation costs or added to the cost of such items. Where identification with the materials received cannot readily be made, inbound transportation cost may be charged to the appropriate indirect (F&A) cost accounts if the recipient follows a consistent, equitable procedure in this respect. Outbound freight, if reimbursable under the terms and conditions of the financial assistance award, should be treated as a direct cost.

5.474 Travel costs

(a) *General.* Travel costs are the expenses for transportation, lodging, subsistence, and related items incurred by employees who are in travel status on official business of the recipient. Such costs may be charged on an actual cost basis, on a per diem or mileage basis in lieu of actual costs incurred, or on a combination of the two, provided the method used is applied to an entire trip and not to selected days of the trip, and results in charges consistent with those normally allowed in like circumstances in the recipient's non-federally-funded activities and in accordance with recipient's written travel reimbursement policies. Notwithstanding the provisions of 5.444 General costs of government, travel costs of officials covered by that section are allowable with the prior written approval of BPA or the pass-through entity when they are specifically related to the financial assistance award.

(b) *Lodging and subsistence.* Costs incurred by employees and officers for travel, including costs of lodging, other subsistence, and incidental expenses, must be considered reasonable and otherwise allowable only to the extent such costs do not exceed charges normally allowed by the recipient in its regular operations as the result of the recipient's written travel policy. In addition, if these costs are charged directly to the financial assistance award documentation must justify that:
  (1) Participation of the individual is necessary to the financial assistance award; and
  (2) The costs are reasonable and consistent with recipient's established travel policy.

(c) *Temporary dependent care costs.*

(1) Temporary dependent care costs (as dependent is defined in 26 U.S.C. 152) above and beyond regular dependent care that directly results from travel to conferences is allowable provided that:
  (i) The costs are a direct result of the individual's travel for the financial assistance award;
  (ii) The costs are consistent with the recipient's documented travel policy for all entity travel; and
  (iii) Are only temporary during the travel period.
(2) Travel costs for dependents are unallowable, except for travel of duration of six months or more with prior approval of BPA. See also 5.432 Conferences.

(d) In the absence of an acceptable, written recipient policy regarding travel costs, the rates and amounts established under 5 U.S.C. 5701-11, ("Travel and Subsistence Expenses; Mileage Allowances"), or by the Administrator of General Services, or by the President (or his or her designee) pursuant to any provisions of such subchapter must apply to travel under financial assistance awards (48 CFR 31.205-46(a)).

(e) *Commercial air travel.*
(1) Airfare costs in excess of the basic least expensive unrestricted accommodations class offered by commercial airlines are unallowable except when such accommodations would:
  (i) Require circuitous routing;
  (ii) Require travel during unreasonable hours;
  (iii) Excessively prolong travel;
  (iv) Result in additional costs that would offset the transportation savings; or
  (v) Offer accommodations not reasonably adequate for the traveler's medical needs. The recipient must justify and document these conditions on a case-by-case basis in order for the use of first-class or business-class airfare to be allowable in such cases.
(2) Unless a pattern of avoidance is detected, BPA will generally not question a recipient's determinations that customary standard airfare or other discount airfare is unavailable for specific trips if the recipient can demonstrate that such airfare was not available in the specific case.

(f) *Air travel by other than commercial carrier.* Costs of travel by recipient-owned, -leased, or -chartered aircraft include the cost of lease, charter, operation (including personnel costs), maintenance, depreciation, insurance, and other related costs. The portion of such costs that exceeds the cost of airfare as provided for in paragraph (d) of this section, is unallowable.

5.475 Trustees

Travel and subsistence costs of trustees (or directors) at IHEs and nonprofit organizations are allowable. See also 5.474 Travel costs.

PART 6—AUDIT REQUIREMENTS

GENERAL

6.500 [Reserved]

AUDITS

6.501 Audit requirements

(a) *Audit required.* A recipient that expends $1,000,000 or more during the recipient's fiscal year in financial assistance awards should have a single or program-specific audit conducted for that year in accordance with the provisions of this part. The recipient shall submit the final audit to the CO as soon as possible.

(b) *Single audit.* A recipient that expends $1,000,000 or more during the recipient's fiscal year in financial assistance awards should have a single audit conducted in accordance with 6.514 Scope of audit except when it elects to have a program-specific audit conducted in accordance with paragraph (c) of this section.

(c) *Program-specific audit election.* When an auditee expends financial assistance awards under only one Federal program (excluding R&D) and the Federal program's statutes, regulations, or the terms and conditions of the financial assistance award do not require a financial statement audit of the auditee, the auditee may elect to have a program-specific audit conducted in accordance with 6.507 Program-specific audits. A program-specific audit may not be elected for R&D unless all of the financial assistance awards expended were received from BPA, or BPA and the same pass-through entity, and BPA, or the pass-through entity in the case of a subrecipient, approves in advance a program-specific audit.

(d) *Exemption when financial assistance awards expended are less than $1,000,000.* A recipient that expends less than $1,000,000 during the recipient's fiscal year in financial assistance awards is exempt from Federal audit requirements for that year, except as noted in 6.503 Relation to other audit requirements, but records must be available for review or audit by appropriate officials of BPA, pass-through entity, and Government Accountability Office (GAO).

(e) *Federally Funded Research and Development Centers (FFRDC).* Management of an auditee that owns or operates a FFRDC may elect to treat the FFRDC as a separate entity for purposes of this part.

(f) *Subrecipients and Contractors.* An auditee may simultaneously be a recipient, a subrecipient, and a contractor. Financial assistance awards expended as a recipient or a subrecipient are subject to audit under this part. The payments received for goods or services provided as a contractor are not financial assistance awards. Section 4.330 Subrecipient and contractor determinations sets forth the considerations in determining whether payments constitute a financial assistance award or a payment for goods or services provided as a contractor.

(g) *Compliance responsibility for contractors.* In most cases, the auditee's compliance responsibility for contractors is only to ensure that the procurement, receipt, and payment for goods and services comply with Federal statutes, regulations, and the terms and conditions of financial assistance awards. Financial assistance award compliance requirements normally do not pass through to contractors. However, the auditee is responsible for ensuring compliance for procurement transactions which are structured such that the contractor is responsible for program compliance or the contractor's records must be reviewed to determine program compliance. Also, when these procurement transactions relate to a major program, the scope of the audit must include

determining whether these transactions are in compliance with Federal statutes, regulations, and the terms and conditions of financial assistance awards.

(h) *For-profit subrecipient.* Since this part does not apply to for-profit subrecipients, the pass-through entity is responsible for establishing requirements, as necessary, to ensure compliance by for-profit subrecipients. The agreement with the for-profit subrecipient must describe applicable compliance requirements and the for-profit subrecipient's compliance responsibility. Methods to ensure compliance for financial assistance awards made to for-profit subrecipients may include pre-award audits, monitoring during the agreement, and post-award audits. See also 4.331 Requirements for the pass-through entities.

6.502 Basis for determining financial assistance awards expended

(a) *Determining financial assistance awards expended.* The determination of when a financial assistance award is expended must be based on when the activity related to the financial assistance award occurs. Generally, the activity pertains to events that require the recipient to comply with Federal statutes, regulations, and the terms and conditions of financial assistance awards, such as: expenditure/expense transactions associated with awards including grants, cost-reimbursement contracts, compacts with Indian Tribes, cooperative agreements, and direct appropriations; the disbursement of funds to subrecipients; the receipt of property; the receipt of surplus property; the receipt or use of program income; the distribution or use of food commodities; the disbursement of amounts entitling the recipient to an interest subsidy; and the period when insurance is in force.

(b) *Endowment funds.* The cumulative balance of financial assistance awards for endowment funds that are federally restricted are considered financial assistance awards expended in each audit period in which the funds are still restricted.

(c) *Free rent.* Free rent received by itself is not considered a financial assistance award expended under this part. However, free rent received as part of a financial assistance award to carry out a BPA program must be included in determining financial assistance awards expended and subject to audit under this part.

(d) *Valuing non-cash assistance.* Federal non-cash assistance, such as free rent, food commodities, donated property, or donated surplus property, must be valued at fair market value at the time of receipt or the assessed value provided by BPA.

6.503 Relation to other audit requirements

(a) An audit conducted in accordance with this part must be in lieu of any financial audit of financial assistance awards which a recipient is required to undergo under any other Federal statute or regulation. To the extent that such audit provides BPA with the information it requires to carry out its responsibilities under Federal statute or regulation, BPA must rely upon and use that information.

(b) Notwithstanding subsection (a), BPA, Inspectors General, or GAO may conduct or arrange for additional audits which are necessary to carry out its responsibilities under Federal statute or regulation. The provisions of this part do not authorize any recipient to constrain, in any manner, such Federal agency from carrying out or arranging for such additional audits, except that the Federal agency must plan such audits to not be duplicative of other audits of financial assistance awards. Prior to commencing such an audit, BPA or the pass-through entity may review the FAC for recent audits submitted by the recipient, and to the extent such audits meet BPA’s or the pass-through entity's needs, BPA or the pass-through entity must rely upon and use such audits. Any

additional audits must be planned and performed in such a way as to build upon work performed, including the audit documentation, sampling, and testing already performed, by other auditors.

(c) The provisions of this part do not limit the authority of BPA to conduct, or arrange for the conduct of, audits and evaluations of financial assistance awards, nor limit the authority of any Federal agency Inspector General or other Federal official.

(d) BPA to pay for additional audits. When BPA conducts or arranges for additional audits BPA must, consistent with other applicable Federal statutes and regulations, arrange for funding the full cost of such additional audits.

(e) Request for a program to be audited as a major program. BPA may request that an auditee have a particular BPA program audited as a major program in lieu of BPA conducting or arranging for the additional audits. To allow for planning, such requests should be made at least 180 calendar days prior to the end of the fiscal year to be audited. The auditee, after consultation with its auditor, should promptly respond to such a request by informing BPA whether the program would otherwise be audited as a major program using the risk-based audit approach described in 6.518 Major program and, if not, the estimated incremental cost. BPA must then promptly confirm to the auditee whether it wants the program audited as a major program. If the program is to be audited as a major program based upon this BPA request, and BPA agrees to pay the full incremental costs, then the auditee must have the program audited as a major program. A pass-through entity may use the provisions of this paragraph for a subrecipient.

6.504 Frequency of audits

Except for the provisions for biennial audits provided in paragraphs (a) and (b) of this section, audits required by this part must be performed annually. Any biennial audit must cover both years within the biennial period.

(a) A state, local government, or Indian tribe that is required by constitution or statute, in effect on January 1, 1987, to undergo its audits less frequently than annually, is permitted to undergo its audits pursuant to this part biennially. This requirement must still be in effect for the biennial period.

(b) Any nonprofit organization that had biennial audits for all biennial periods ending between July 1, 1992, and January 1, 1995, is permitted to undergo its audits pursuant to this part biennially.

6.505 Sanctions

In cases of continued inability or unwillingness to have an audit conducted in accordance with this part, BPA and pass-through entities may take appropriate action as provided in 4.338 Remedies for noncompliance.

6.506 Audit costs

See 5.425 Audit services.

6.507 Program-specific audits

(a) *Program-specific audit guide available.* In many cases, a program-specific audit guide will be available to provide specific guidance to the auditor with respect to internal controls, compliance requirements, suggested audit procedures, and audit reporting requirements. A listing of current program-specific audit guides can be found in the compliance supplement beginning with the 2014 supplement including Federal contact information and a website where a copy of the guide can be

obtained. When a current program-specific audit guide is available, the auditor must follow GAGAS and the guide when performing a program-specific audit.

(b) *Program-specific audit guide not available*

(1) When a current program-specific audit guide is not available, the auditee and auditor must have basically the same responsibilities for the Federal program as they would have for an audit of a major program in a single audit.

(2) The auditee must prepare the financial statement(s) for the Federal program that includes, at a minimum, a schedule of expenditures of financial assistance awards for the program and notes that describe the significant accounting policies used in preparing the schedule, a summary schedule of prior audit findings consistent with the requirements of 6.511 Audit findings follow-up, paragraph (b), and a corrective action plan consistent with the requirements of 6.511 Audit findings follow-up, paragraph (c).

(3) The auditor must:

(i) Perform an audit of the financial statement(s) for the Federal program in accordance with GAGAS;

(ii) Obtain an understanding of internal controls and perform tests of internal controls over the Federal program consistent with the requirements of 6.514 Scope of audit, paragraph (c) for a major program;

(iii) Perform procedures to determine whether the auditee has complied with Federal statutes, regulations, and the terms and conditions of financial assistance awards that could have a direct and material effect on the Federal program consistent with the requirements of 6.514 Scope of audit, paragraph (d) for a major program;

(iv) Follow up on prior audit findings, perform procedures to assess the reasonableness of the summary schedule of prior audit findings prepared by the auditee in accordance with the requirements of 6.511 Audit findings follow-up, and report, as a current year audit finding, when the auditor concludes that the summary schedule of prior audit findings materially misrepresents the status of any prior audit finding; and

(v) Report any audit findings consistent with the requirements of 6.516 Audit findings.

(4) The auditor's report(s) may be in the form of either combined or separate reports and may be organized differently from the manner presented in this section. The auditor's report(s) must state that the audit was conducted in accordance with this part and include the following:

(i) An opinion (or disclaimer of opinion) as to whether the financial statement(s) of the Federal program is presented fairly in all material respects in accordance with the stated accounting policies;

(ii) A report on internal control related to the Federal program, which must describe the scope of testing of internal control and the results of the tests;

(iii) A report on compliance which includes an opinion (or disclaimer of opinion) as to whether the auditee complied with laws, regulations, and the terms and conditions of financial assistance awards which could have a direct and material effect on the Federal program; and

(iv) A schedule of findings and questioned costs for the Federal program that includes a summary of the auditor's results relative to the Federal program in a format consistent with 6.515 Audit reporting, paragraph (d)(1) and findings and questioned costs consistent with the requirements of 6.515 Audit reporting, paragraph (d)(3).

(c) *Report submission for program-specific audits.*

(1) The audit must be completed and the reporting required by paragraph (c)(2) or (c)(3) of this section submitted within the earlier of 30 calendar days after receipt of the auditor's report(s), or nine months after the end of the audit period, unless a different period is specified in a program-specific audit guide. Unless restricted by Federal law or regulation, the auditee must

make report copies available for public inspection. Auditees and auditors must ensure that their respective parts of the reporting package do not include protected personally identifiable information.

(2) When a program-specific audit guide is available, the auditee must electronically submit to BPA the data collection form prepared in accordance with 6.512 Report submission, paragraph (b), as applicable to a program-specific audit, and the reporting required by the program-specific audit guide.

(3) When a program-specific audit guide is not available, the reporting package for a program-specific audit must consist of the financial statement(s) of the Federal program, a summary schedule of prior audit findings, and a corrective action plan as described in paragraph (b)(2) of this section, and the auditor's report(s) described in paragraph (b)(4) of this section. The data collection form prepared in accordance with 6.512 Report submission, as applicable to a program-specific audit, and one copy of this reporting package must be electronically submitted to BPA.

(d) *Other sections of this part may apply.* Program-specific audits are subject to:

(1) 6.501 Audit Requirement through 6.503 Relation to other audit requirements, paragraph (d);
(2) 6.504 Frequency of audits through 6.506 Audit costs;
(3) 6.508 Auditee responsibilities through 6.509 Auditor selection;
(4) 6.511 Audit findings follow-up;
(5) 6.512 Report submission, paragraphs (e) through (h);
(6) 6.516 Audit findings through 6.517 Audit documentation;
(7) 6.521 Management decision, and
(8) Other referenced provisions of this part unless contrary to the provisions of this section, a program-specific audit guide, or program statutes and regulations.

AUDITEES

6.508 Auditee responsibilities

The auditee must:

(a) Procure or otherwise arrange for the audit required by this part in accordance with 6.509 Auditor selection, and ensure it is properly performed and submitted when due in accordance with 6.512 Report submission.

(b) Prepare appropriate financial statements, including the schedule of expenditures of financial assistance awards in accordance with 6.510 Financial statements.

(c) Promptly follow up and take corrective action on audit findings, including preparation of a summary schedule of prior audit findings and a corrective action plan in accordance with 6.511 Audit findings follow-up, paragraph (b) and 6.511 Audit findings follow-up, paragraph (c), respectively.

(d) Provide the auditor with access to personnel, accounts, books, records, supporting documentation, and other information as needed for the auditor to perform the audit required by this part.

6.509 Auditor selection

(a) *Auditor procurement.* In procuring audit services, the auditee must follow the procurement standards prescribed by the Procurement Standards in 4.317 Procurement by states through 4.326 Contract provisions of Part 4 - Post Financial assistance award Requirements. When procuring audit services, the objective is to obtain high-quality audits. In requesting proposals for audit services, the objectives and scope of the audit must be made clear and the recipient must request a copy of the audit organization's peer review report which the auditor is required to provide under

GAGAS. Whenever possible, the auditee must make positive efforts to utilize small businesses, minority-owned firms, and women's business enterprises, in procuring audit services as stated in 4.321 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.

(b) *Restriction on auditor preparing indirect cost proposals.* An auditor who prepares the indirect cost proposal or cost allocation plan may not also be selected to perform the audit required by this part when the indirect costs recovered by the auditee during the prior year exceeded $1 million. This restriction applies to the base year used in the preparation of the indirect cost proposal or cost allocation plan and any subsequent years in which the resulting indirect cost agreement or cost allocation plan is used to recover costs.

(c) *Use of Federal auditors.* Federal auditors may perform all or part of the work required under this part if they comply fully with the requirements of this part.

6.510 Financial statements

(a) *Financial statements.* The auditee must prepare financial statements that reflect its financial position, results of operations or changes in net assets, and, where appropriate, cash flows for the fiscal year audited. The financial statements must be for the same organizational unit and fiscal year that is chosen to meet the requirements of this part. However, recipient-wide financial statements may also include departments, agencies, and other organizational units that have separate audits in accordance with 6.514 Scope of audit, paragraph (a) and prepare separate financial statements.

(b) *Schedule of expenditures of financial assistance awards.* The auditee must also prepare a schedule of expenditures of financial assistance awards for the period covered by the auditee's financial statements which must include the total financial assistance awards expended as determined in accordance with 6.502 Basis for determining financial assistance awards expended. While not required, the auditee may choose to provide information requested by BPA and pass-through entities to make the schedule easier to use. For example, when a BPA program has multiple financial assistance award years, the auditee may list the amount of financial assistance awards expended for each financial assistance award year separately. At a minimum, the schedule must:
(1) List individual BPA programs individual financial assistance award.
(2) For financial assistance awards received as a subrecipient, the name of the pass-through entity and identifying number assigned by the pass-through entity must be included.
(3) Provide total financial assistance awards expended for each BPA program and the CFDA number or other identifying number when the CFDA information is not available.
(4) Include the total amount provided to subrecipients from each BPA program.
(5) Include notes that describe the significant accounting policies used in preparing the schedule, and note whether or not the auditee elected to use the 15% de minimis cost rate as covered in 5.414 Indirect (F&A) costs.

6.511 Audit findings follow-up

(a) *General.* The auditee is responsible for follow-up and corrective action on all audit findings. As part of this responsibility, the auditee must prepare a summary schedule of prior audit findings. The auditee must also prepare a corrective action plan for current year audit findings. The summary schedule of prior audit findings and the corrective action plan must include the reference numbers the auditor assigns to audit findings under 6.516 Audit findings, paragraph (c). Since the summary schedule may include audit findings from multiple years, it must include the fiscal year in which the

finding initially occurred. The corrective action plan and summary schedule of prior audit findings must include findings relating to the financial statements which are required to be reported in accordance with GAGAS.

(b) *Summary schedule of prior audit findings.* The summary schedule of prior audit findings must report the status of all audit findings included in the prior audit's schedule of findings and questioned costs. The summary schedule must also include audit findings reported in the prior audit's summary schedule of prior audit findings except audit findings listed as corrected in accordance with paragraph (b)(1) of this section, or no longer valid or not warranting further action in accordance with paragraph (b)(3) of this section.
  (1) When audit findings were fully corrected, the summary schedule need only list the audit findings and state that corrective action was taken.
  (2) When audit findings were not corrected or were only partially corrected, the summary schedule must describe the reasons for the finding's recurrence and planned corrective action, and any partial corrective action taken. When corrective action taken is significantly different from corrective action previously reported in a corrective action plan or in BPA's or the pass-through entity's management decision, the summary schedule must provide an explanation.
  (3) When the auditee believes the audit findings are no longer valid or do not warrant further action, the reasons for this position must be described in the summary schedule. A valid reason for considering an audit finding as not warranting further action is that all of the following have occurred:
    (i) Two years have passed since the audit report in which the finding occurred was submitted to the FAC;
    (ii) BPA or the pass-through entity is not currently following up with the auditee on the audit finding; and
    (iii) A management decision was not issued.

(c) *Corrective action plan.* At the completion of the audit, the auditee must prepare, in a document separate from the auditor's findings described in 6.516 Audit findings, a corrective action plan to address each audit finding included in the current year auditor's reports. The corrective action plan must provide the name(s) of the contact person(s) responsible for corrective action, the corrective action planned, and the anticipated completion date. If the auditee does not agree with the audit findings or believes corrective action is not required, then the corrective action plan must include an explanation and specific reasons.

6.512 Report submission

(a) *General.*
  (1) The audit must be completed and the data collection form described in paragraph (b) of this section and reporting package described in paragraph (c) of this section must be submitted within 30 calendar days after receipt of the auditor's report(s), or nine months after the end of the audit period.
  (2) Unless restricted by Federal statutes or regulations, the auditee must make copies available for public inspection. Auditees and auditors must ensure that their respective parts of the reporting package do not include protected personally identifiable information.
  (3) The auditee must submit required data elements described in Appendix X—Data Collection Form (Form SF-SAC), which state whether the audit was completed in accordance with this part and provides information about the auditee, its Federal programs, and the results of the audit. The data must include information available from the audit required by this part that is necessary for BPA to use the audit to ensure integrity for BPA programs. The data elements and format must be approved by OMB, available from the FAC, and include collections of information from the reporting package described in paragraph (c) of this section. A senior level

representative of the auditee (e.g., state controller, director of finance, chief executive officer, or chief financial officer) must sign a statement to be included as part of the data collection that says that the auditee complied with the requirements of this part, the data were prepared in accordance with this part (and the instructions accompanying the form), the reporting package does not include protected personally identifiable information, the information included in its entirety is accurate and complete, and that BPA is authorized to make the reporting package and the form publicly available on a website.

(b) *Exception for Indian Tribes and Tribal Organizations.*
(1) An auditee that is an Indian tribe or a tribal organization (as defined in the Indian Self-Determination, Education and Assistance Act (ISDEAA), 25 U.S.C. 450b(l)) may opt not to authorize BPA to make the reporting package publicly available on a Web site, by excluding the authorization for BPA publication in the statement described in paragraph (b)(1) of this section. If this option is exercised, the auditee becomes responsible for submitting the reporting package directly to any pass-through entities through which it has received a financial assistance award and to pass-through entities for which the summary schedule of prior audit findings reported the status of any findings related to financial assistance awards that the pass-through entity provided. Unless restricted by Federal statute or regulation, if the auditee opts not to authorize publication, it must make copies of the reporting package available for public inspection.
(2) Using the information included in the reporting package described in paragraph (c) of this section, the auditor must complete the applicable data elements of the data collection form. The auditor must sign a statement to be included as part of the data collection form that indicates, at a minimum, the source of the information included in the form, the auditor's responsibility for the information, that the form is not a substitute for the reporting package described in paragraph (c) of this section, and that the content of the form is limited to the collection of information prescribed by OMB.

(c) *Reporting package.* The reporting package must include the:
(1) Financial statements and schedule of expenditures of financial assistance awards discussed in 6.510 Financial statements, paragraphs (a) and (b), respectively;
(2) Summary schedule of prior audit findings discussed in 6.511 Audit findings follow-up, paragraph (b);
(3) Auditor's report(s) discussed in 6.515 Audit reporting; and
(4) Corrective action plan discussed in 6.511 Audit findings follow-up, paragraph (c).

(d) *Submission to BPA.* The auditee must electronically submit to BPA the data collection form described in paragraph (b) of this section and the reporting package described in paragraph (c) of this section.

(e) *Requests for management letters issued by the auditor.* In response to requests by BPA or the pass-through entity, auditees must submit a copy of any management letters issued by the auditor.

(f) *Report retention requirements.* Auditees must keep one copy of the data collection form described in paragraph (b) of this section and one copy of the reporting package described in paragraph (c) of this section on file for three years from the date of submission to BPA.

(g) *BPA responsibilities.* BPA must make available the reporting packages received in accordance with paragraph (c) of this section and 6.507 Program-specific audits, paragraph (c) to the public, except for Indian tribes exercising the option in (b)(2) of this section, and maintain a data base of

completed audits, and follow up with known auditees that have not submitted the required data collection forms and reporting packages.

FEDERAL AGENCIES
6.513 [Reserved]

AUDITORS
6.514 Scope of audit

(a) *General.* The audit must be conducted in accordance with GAGAS. The audit must cover the entire operations of the auditee, or, at the option of the auditee, such audit must include a series of audits that cover departments, agencies, and other organizational units that expended or otherwise administered financial assistance awards during such audit period, provided that each such audit must encompass the financial statements and schedule of expenditures of financial assistance awards for each such department, agency, and other organizational unit, which must be considered to be a recipient. The financial statements and schedule of expenditures of financial assistance awards must be for the same audit period.

(b) *Financial statements.* The auditor must determine whether the financial statements of the auditee are presented fairly in all material respects in accordance with generally accepted accounting principles. The auditor must also determine whether the schedule of expenditures of financial assistance awards is stated fairly in all material respects in relation to the auditee's financial statements as a whole.

(c) *Internal control.*
(1) The compliance supplement provides guidance on internal controls over Federal programs based upon the guidance in Standards for Internal Control in the Federal Government issued by the Comptroller General of the United States and the Internal Control—Integrated Framework, issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).
(2) In addition to the requirements of GAGAS, the auditor must perform procedures to obtain an understanding of internal control over BPA programs sufficient to plan the audit to support a low assessed level of control risk of noncompliance for major programs.
(3) Except as provided in paragraph (c)(4) of this section, the auditor must:
(i) Plan the testing of internal control over compliance for major programs to support a low assessed level of control risk for the assertions relevant to the compliance requirements for each major program; and
(ii) Perform testing of internal control as planned in paragraph (c)(3)(i) of this section.
(4) When internal control over some or all of the compliance requirements for a major program are likely to be ineffective in preventing or detecting noncompliance, the planning and performing of testing described in paragraph (c)(3) of this section are not required for those compliance requirements. However, the auditor must report a significant deficiency or material weakness in accordance with 6.516 Audit findings, assess the related control risk at the maximum, and consider whether additional compliance tests are required because of ineffective internal control.

(d) *Compliance.*
(1) In addition to the requirements of GAGAS, the auditor must determine whether the auditee has complied with Federal statutes, regulations, and the terms and conditions of financial assistance awards that may have a direct and material effect on each of its major programs.

(2) The principal compliance requirements applicable to most Federal programs and the compliance requirements of the largest Federal programs are included in the compliance supplement.
(3) For the compliance requirements related to BPA programs contained in the compliance supplement, an audit of these compliance requirements will meet the requirements of this part. Where there have been changes to the compliance requirements and the changes are not reflected in the compliance supplement, the auditor must determine the current compliance requirements and modify the audit procedures accordingly. For those BPA programs not covered in the compliance supplement, the auditor must follow the compliance supplement's guidance for programs not included in the supplement.
(4) The compliance testing must include tests of transactions and such other auditing procedures necessary to provide the auditor sufficient appropriate audit evidence to support an opinion on compliance.

(e) *Audit follow-up.* The auditor must follow-up on prior audit findings, perform procedures to assess the reasonableness of the summary schedule of prior audit findings prepared by the auditee in accordance with 6.511 Audit findings follow-up paragraph (b), and report, as a current year audit finding, when the auditor concludes that the summary schedule of prior audit findings materially misrepresents the status of any prior audit finding. The auditor must perform audit follow-up procedures regardless of whether a prior audit finding relates to a major program in the current year.

(f) *Data Collection Form.* As required in 6.512 Report submission paragraph (b)(3), the auditor must complete and sign specified sections of the data collection form.

6.515 Audit reporting

The auditor's report(s) may be in the form of either combined or separate reports and may be organized differently from the manner presented in this section. The auditor's report(s) must state that the audit was conducted in accordance with this part and include the following:

(a) An opinion (or disclaimer of opinion) as to whether the financial statements are presented fairly in all material respects in accordance with generally accepted accounting principles and an opinion (or disclaimer of opinion) as to whether the schedule of expenditures of financial assistance awards is fairly stated in all material respects in relation to the financial statements as a whole.

(b) A report on internal control over financial reporting and compliance with provisions of laws, regulations, contracts, and award agreements, noncompliance with which could have a material effect on the financial statements. This report must describe the scope of testing of internal control and compliance and the results of the tests, and, where applicable, it will refer to the separate schedule of findings and questioned costs described in paragraph (d) of this section.

(c) A report on compliance for each major program and a report on internal control over compliance. This report must describe the scope of testing of internal control over compliance, include an opinion or disclaimer of opinion as to whether the auditee complied with Federal statutes, regulations, and the terms and conditions of financial assistance awards which could have a direct and material effect on each major program and refer to the separate schedule of findings and questioned costs described in paragraph (d) of this section.

(d) A schedule of findings and questioned costs which must include the following three components:
(1) A summary of the auditor's results, which must include:

(i) The type of report the auditor issued on whether the financial statements audited were prepared in accordance with GAAP (i.e., unmodified opinion, qualified opinion, adverse opinion, or disclaimer of opinion);
(ii) Where applicable, a statement about whether significant deficiencies or material weaknesses in internal control were disclosed by the audit of the financial statements;
(iii) A statement as to whether the audit disclosed any noncompliance that is material to the financial statements of the auditee;
(iv) Where applicable, a statement about whether significant deficiencies or material weaknesses in internal control over major programs were disclosed by the audit;
(v) The type of report the auditor issued on compliance for major programs (i.e., unmodified opinion, qualified opinion, adverse opinion, or disclaimer of opinion);
(vi) A statement as to whether the audit disclosed any audit findings that the auditor is required to report under 6.516 Audit findings paragraph (a);
(vii) An identification of major programs by listing each individual major program.
(viii) A statement as to whether the auditee qualified as a low-risk auditee under 6.520 Criteria for a low-risk auditee.

(2) Findings relating to the financial statements which are required to be reported in accordance with GAGAS.
(3) Findings and questioned costs for financial assistance awards which must include audit findings as defined in 6.516 Audit findings, paragraph (a).
(i) Audit findings (e.g., internal control findings, compliance findings, questioned costs, or fraud) that relate to the same issue must be presented as a single audit finding. Where practical, audit findings should be organized by BPA or the pass-through entity.
(ii) Audit findings that relate to both the financial statements and financial assistance awards, as reported under paragraphs (d)(2) and (d)(3) of this section, respectively, must be reported in both sections of the schedule. However, the reporting in one section of the schedule may be in summary form with a reference to a detailed reporting in the other section of the schedule.

(e) Nothing in this part precludes combining of the audit reporting required by this section with the reporting required by 6.512 Report submission, paragraph (b) Data Collection when allowed by GAGAS and Appendix X—Data Collection Form (Form SF-SAC).

6.516 Audit findings

(a) *Audit findings reported.* The auditor must report the following as audit findings in a schedule of findings and questioned costs:
(1) Significant deficiencies and material weaknesses in internal control over major programs and significant instances of abuse relating to major programs. The auditor's determination of whether a deficiency in internal control is a significant deficiency or material weakness for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program identified in the Compliance Supplement.
(2) Material noncompliance with the provisions of Federal statutes, regulations, or the terms and conditions of financial assistance awards related to a major program. The auditor's determination of whether a noncompliance with the provisions of Federal statutes, regulations, or the terms and conditions of financial assistance awards is material for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program identified in the compliance supplement.
(3) Known questioned costs that are greater than $25,000 for a type of compliance requirement for a major program. Known questioned costs are those specifically identified by the auditor. In evaluating the effect of questioned costs on the opinion on compliance, the auditor considers

the best estimate of total costs questioned (likely questioned costs), not just the questioned costs specifically identified (known questioned costs). The auditor must also report known questioned costs when likely questioned costs are greater than $25,000 for a type of compliance requirement for a major program. In reporting questioned costs, the auditor must include information to provide proper perspective for judging the prevalence and consequences of the questioned costs.

(4) Known questioned costs that are greater than $25,000 for a BPA program which is not audited as a major program. Except for audit follow-up, the auditor is not required under this part to perform audit procedures for such BPA program; therefore, the auditor will normally not find questioned costs for a program that is not audited as a major program. However, if the auditor does become aware of questioned costs for a BPA program that is not audited as a major program (e.g., as part of audit follow-up or other audit procedures) and the known questioned costs are greater than $25,000, then the auditor must report this as an audit finding.

(5) The circumstances concerning why the auditor's report on compliance for each major program is other than an unmodified opinion, unless such circumstances are otherwise reported as audit findings in the schedule of findings and questioned costs for financial assistance awards.

(6) Known or likely fraud affecting a financial assistance award, unless such fraud is otherwise reported as an audit finding in the schedule of findings and questioned costs for financial assistance awards. This paragraph does not require the auditor to publicly report information which could compromise investigative or legal proceedings or to make an additional reporting when the auditor confirms that the fraud was reported outside the auditor's reports under the direct reporting requirements of GAGAS.

(7) Instances where the results of audit follow-up procedures disclosed that the summary schedule of prior audit findings prepared by the auditee in accordance with 6.511 Audit findings follow-up, paragraph (b) materially misrepresents the status of any prior audit finding.

(b) *Audit finding detail and clarity.* Audit findings must be presented in sufficient detail and clarity for the auditee to prepare a corrective action plan and take corrective action, and for BPA and pass-through entities to arrive at a management decision. The following specific information must be included, as applicable, in audit findings:

(1) Federal program and specific financial assistance award identification including the financial assistance award identification number and year, name of Federal agency (BPA), and name of the applicable pass-through entity. When information, such as the financial assistance award identification number, is not available, the auditor must provide the best information available to describe the financial assistance award.

(2) The criteria or specific requirement upon which the audit finding is based, including the Federal statutes, regulations, or the terms and conditions of the financial assistance awards. Criteria generally identify the required or desired state or expectation with respect to the program or operation. Criteria provide a context for evaluating evidence and understanding findings.

(3) The condition found, including facts that support the deficiency identified in the audit finding.

(4) A statement of cause that identifies the reason or explanation for the condition or the factors responsible for the difference between the situation that exists (condition) and the required or desired state (criteria), which may also serve as a basis for recommendations for corrective action.

(5) The possible asserted effect to provide sufficient information to the auditee and BPA, or the pass-through entity in the case of a subrecipient, to permit them to determine the cause and effect to facilitate prompt and proper corrective action. A statement of the effect or potential effect should provide a clear, logical link to establish the impact or potential impact of the difference between the condition and the criteria.

(6) Identification of questioned costs and how they were computed. Known questioned costs must be identified by applicable financial assistance award identification number(s).

(7) Information to provide proper perspective for judging the prevalence and consequences of the audit findings, such as whether the audit findings represent an isolated instance or a systemic problem. Where appropriate, instances identified must be related to the universe and the number of cases examined and be quantified in terms of dollar value. The auditor should report whether the sampling was a statistically valid sample.
(8) Identification of whether the audit finding was a repeat of a finding in the immediately prior audit and if so any applicable prior year audit finding numbers.
(9) Recommendations to prevent future occurrences of the deficiency identified in the audit finding.
(10) Views of responsible officials of the auditee.

(c) *Reference numbers.* Each audit finding in the schedule of findings and questioned costs must include a reference number in the format meeting the requirements of the data collection form submission required by 6.512 Report submission, paragraph (b) to allow for easy referencing of the audit findings during follow-up.

6.517 Audit documentation

(a) *Retention of audit documentation.* The auditor must retain audit documentation and reports for a minimum of three years after the date of issuance of the auditor's report(s) to the auditee, unless the auditor is notified in writing by BPA or the cognizant agency for audit, oversight agency for audit, cognizant agency for indirect costs, or the pass-through entity to extend the retention period. When the auditor is aware that BPA, the pass-through entity, or auditee is contesting an audit finding, the auditor must contact the parties contesting the audit finding for guidance prior to destruction of the audit documentation and reports.

(b) *Access to audit documentation.* Audit documentation must be made available upon request to the cognizant or oversight agency for audit or its designee, cognizant agency for indirect cost, BPA, or GAO at the completion of the audit, as part of a quality review, to resolve audit findings, or to carry out oversight responsibilities consistent with the purposes of this part. Access to audit documentation includes the right of BPA to obtain copies of audit documentation, as is reasonable and necessary.

6.518 Major program

(a) A major program is determined based on risk. In determining whether a BPA program is a major program, the CO shall consider the following:
(1) The program has received over $5 million in awards during the current or previous fiscal year;
(2) Current and prior audit experience;
(3) Oversight by Federal agencies and pass-through entities;
(4) Inherent risk of the Federal program.

This risk-based approach must include consideration of paragraphs (b) through (g) of this section.

(b) *Step one.*
(1) The auditor must identify BPA programs that meet or exceed the $5 million threshold during an audit period.
(2) For biennial audits permitted under 6.504 Frequency of audits, the determination of major programs must be based upon the financial assistance awards expended during the two-year period.

(c) *Step two.*

(1) The auditor must identify major programs which are low-risk. In making this determination, the auditor must consider whether the requirements in 6.519 Criteria for Federal program risk paragraph (c), the results of audit follow-up, or any changes in personnel or systems affecting the program indicate significantly increased risk and preclude the program from being low risk. For a major program to be considered low-risk, it must have been audited as a major program in at least one of the two most recent audit periods (in the most recent audit period in the case of a biennial audit), and, in the most recent audit period, the program must have not had:
   (i) Internal control deficiencies which were identified as material weaknesses in the auditor's report on internal control for major programs as required under 6.515 Audit reporting, paragraph (c);
   (ii) A modified opinion on the program in the auditor's report on major programs as required under 6.515 Audit reporting, paragraph (c); or
   (iii) Known or likely questioned costs that exceed 5 percent of the total financial assistance awards expended for the program.

(d) *Step three.*
   (1) The auditor must identify non-major programs which are high-risk using professional judgment and the criteria in 6.519 Criteria for Federal program risk. Except for known material weakness in internal control or compliance problems as discussed in 6.519 Criteria for Federal program risk paragraphs (b)(1), (b)(2), and (c)(1), a single criteria in risk would seldom cause a non-major program to be considered high-risk. When identifying which non-major programs to risk assess, the auditor is encouraged to use an approach which provides an opportunity for different high-risk non-major programs to be audited as major over a period of time.
   (2) The auditor is not expected to perform risk assessments on relatively small (less than $100k) BPA programs.

(e) *Step four.* At a minimum, the auditor must audit all of the following as major programs:
   (1) All major programs not identified as low risk under step two (paragraph (c)(1) of this section).
   (2) All non-major programs identified as high-risk under step three (paragraph (d) of this section).

(f) *Documentation of risk.* The auditor must include in the audit documentation the risk analysis process used in determining major programs.

(g) *Auditor's judgment.* When the major program determination was performed and documented in accordance with this part, the auditor's judgment in applying the risk-based approach to determine major programs must be presumed correct. Challenges by BPA and pass-through entities must only be for clearly improper use of the requirements in this part. However, BPA and pass-through entities may provide auditors guidance about the risk of a particular BPA program and the auditor must consider this guidance in determining major programs in audits not yet completed.

6.519 Criteria for BPA program risk

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

(b) *Current and prior audit experience.*
   (1) Weaknesses in internal control over BPA programs would indicate higher risk. Consideration should be given to the control environment over BPA programs and such factors as the expectation of management's adherence to Federal statutes, regulations, and the terms and

conditions of financial assistance awards and the competence and experience of personnel who administer BPA programs.

(i) A BPA program administered under multiple internal control structures may have higher risk. When assessing risk in a large single audit, the auditor must consider whether weaknesses are isolated in a single operating unit (e.g., one college campus) or pervasive throughout the entity.

(ii) When significant parts of a BPA program are passed through to subrecipients, a weak system for monitoring subrecipients would indicate higher risk.

(2) Prior audit findings would indicate higher risk, particularly when the situations identified in the audit findings could have a significant impact on a BPA program or have not been corrected.

(3) BPA programs not recently audited as major programs may be of higher risk than BPA programs recently audited as major programs without audit findings.

(c) *Oversight exercised by BPA and pass-through entities.*

(1) Oversight exercised by BPA or the pass-through entities could be used to assess risk. For example, recent monitoring or other reviews performed by an oversight entity that disclosed no significant problems would indicate lower risk, whereas monitoring that disclosed significant problems would indicate higher risk.

(2) BPA may identify BPA programs that are higher risk.

(d) *Inherent risk of the BPA program.*

(1) The nature of a BPA program may indicate risk. Consideration should be given to the complexity of the program and the extent to which the BPA program contracts for goods and services. For example, BPA programs that disburse funds through third party contracts or have eligibility criteria may be of higher risk. BPA programs primarily involving staff payroll costs may have high risk for noncompliance with requirements of 5.430 Compensation—personal services, but otherwise be at low risk.

(2) The phase of a BPA program in its life cycle at BPA may indicate risk. For example, a new BPA program with new or interim regulations may have higher risk than an established program with time-tested regulations. Also, significant changes in BPA programs, Federal statutes, regulations, or the terms and conditions of financial assistance awards may increase risk.

(3) The phase of a BPA program in its life cycle at the auditee may indicate risk. For example, during the first and last years that an auditee participates in a BPA program, the risk may be higher due to start-up or closeout of program activities and staff.

(4) Non-major programs with larger financial assistance awards expended would be of higher risk than programs with substantially smaller financial assistance awards expended.

6.520 Criteria for a low-risk auditee

An auditee that meets all of the following conditions for each of the preceding two audit periods must qualify as a low-risk auditee and be eligible for reduced audit coverage in accordance with 6.518 Major program.

(a) Single audits were performed on an annual basis in accordance with the provisions of this part, including submitting the data collection form and the reporting package to BPA within the timeframe specified in 6.512 Report submission. A recipient that has biennial audits does not qualify as a low-risk auditee.

(b) The auditor's opinion on whether the financial statements were prepared in accordance with GAAP, or a basis of accounting required by state law, and the auditor's in relation to opinion on the schedule of expenditures of financial assistance awards were unmodified.

(c) There were no deficiencies in internal control which were identified as material weaknesses under the requirements of GAGAS.

(d) The auditor did not report a substantial doubt about the auditee's ability to continue as a going concern.

(e) None of the BPA programs had audit findings from any of the following in either of the preceding two audit periods in which they were classified as major programs:
  (1) Internal control deficiencies that were identified as material weaknesses in the auditor's report on internal control for major programs as required under 6.515 Audit reporting, paragraph (c);
  (2) A modified opinion on a major program in the auditor's report on major programs as required under 6.515 Audit reporting, paragraph (c); or
  (3) Known or likely questioned costs that exceeded 5 percent of the total financial assistance awards expended for a major program during the audit period.

MANAGEMENT DECISIONS

6.521 Management decision

(a) *General.* The management decision must clearly state whether or not the audit finding is sustained, the reasons for the decision, and the expected auditee action to repay disallowed costs, make financial adjustments, or take other action. If the auditee has not completed corrective action, a timetable for follow-up should be given. Prior to issuing the management decision, BPA or the pass-through entity may request additional information or documentation from the auditee, including a request for auditor assurance related to the documentation, as a way of mitigating disallowed costs. The management decision should describe any appeal process available to the auditee. While not required, BPA or the pass-through entity may also issue a management decision on findings relating to the financial statements which are required to be reported in accordance with GAGAS.

(b) *Pass-through entity.* As provided in 4.331 Requirements for the pass-through entities, paragraph (d), the pass-through entity must be responsible for issuing a management decision for audit findings that relate to financial assistance awards it makes to subrecipients.

(c) *Time requirements.* BPA or the pass-through entity responsible for issuing a management decision must do so within six months of acceptance of the audit report by BPA. The auditee must initiate and proceed with corrective action as rapidly as possible and corrective action should begin no later than upon receipt of the audit report.

(d) *Reference numbers.* Management decisions must include the reference numbers the auditor assigned to each audit finding in accordance with 6.516 Audit findings paragraph (c).

PART 7 — CLAUSES

UNIT 1 – GENERAL CLAUSES

CLAUSE 1 REGULATIONS APPLICABLE TO BPA FINANCIAL ASSISTANCE (AUG 2026)

The Bonneville Power Administration's financial assistance function is managed and executed solely in accordance with the Bonneville Financial Assistance Instructions (BFAI). The BFAI is available on the Internet at https://www.bpa.gov/energy-and-services/customers-and-contractors/financial-assistance-instructions-manual

CLAUSE 2 LEGAL AUTHORITY AND EFFECT (JUL 2017)

A BPA financial assistance award, and any modification of such financial assistance award, is valid only if it is in writing and is signed, either in writing or electronically, by a Contracting Officer.

CLAUSE 3 NON-ASSIGNABILITY (JUL 2017)

This financial assistance award may not be transferred, assigned, or assumed, by operation of law or otherwise, without the prior written consent of the Contracting Officer.

CLAUSE 4 COMPLIANCE WITH FEDERAL, STATE, AND MUNICIPAL LAW (JUL 2017)

The Recipient is required to comply with applicable Federal, state, and local laws and regulations for all work performed under this financial assistance award. The Recipient is required to obtain all necessary Federal, state, and local permits, authorizations, and approvals for all work performed under this financial assistance award.

CLAUSE 5 INCONSISTENCY WITH FEDERAL LAW (JUL 2017)

Any apparent inconsistency between Federal Law(s) and the BFAI, and the terms and conditions of this financial assistance award must be immediately referred to the Contracting Officer for resolution through a written notification providing the following information:

(a) The Recipient's award number;

(b) The name and contact information (postal address, telephone number, and email address) for the individual(s) to whom the Contracting Officer should direct any inquiries regarding this matter; and

(c) A detailed description of the apparent inconsistency.

CLAUSE 6 BLANKET FINANCIAL ASSISTANCE AGREEMENT (OCT 2018)

(a) This is a Blanket Financial Assistance Agreement, from which individual Task Orders may be issued as fixed-price, cost reimbursement or cost share as defined elsewhere in this agreement.

(b) Each Task Order will specify the agreement type and any unique terms applicable to that specific Task Order, and will also include a Statement of Work and Budget.

CLAUSE 7 CONTRACTING OFFICER'S REPRESENTATIVE
(OCT 2018)

The Contracting Officer's Representative (COR) is the authorized representative of the Contracting Officer (CO) for technical actions performed in relation to the award. This includes the functions to review the work performed and interpretation of technical program requirements.

The COR is not authorized to act for the CO in the following matters: modifications that change the amount of award, technical requirements, or time for performance, suspension or termination of the Recipient's right to proceed; and final decisions on any matters subject to appeal.

CLAUSE 8 FIELD REPRESENTATIVE
(OCT 2018)

The Field Representative (FR) will be appointed by the Contracting Officer (CO) or the Contracting Officer's Representative (COR) and is authorized by the CO or COR for reviewing project accomplishments and Recipient's technical reports, and interpretation of award requirements.

The Field Representative (FR) is not authorized to act in the following matters:

(a) Modifications that change the award amount or general direction of the project;

(b) Suspension or termination of the recipient's right to proceed;

(c) Approval of financial requests and reports; and

(d) Final decisions on any matters subject to appeal.

CLAUSE 9 CHANGE OR ABSENCE OF THE PRINCIPAL INVESTIGATOR OR DESIGNATED KEY PERSONNEL
(JUL 2017)

Since BPA funding of this project is based to a significant extent on the qualifications and level of participation of the Principal Investigator(s), or designated key personnel, a change of Principal Investigator(s), or key personnel, or their level of effort is considered a change in the approved project. The approval of BPA must be obtained prior to any change of the Principal Investigator or key personnel who have been identified as key personnel. In addition, any continuous absence of the Principal Investigator or key personnel in excess of three months, or plans for the Principal Investigator or key personnel to become substantially less involved in the project than was indicated in the approved application requires BPA's prior approval. The Recipient must contact the Contracting Officer (CO) and Contracting Officer's Representative (COR) immediately upon becoming aware that any of these changes are likely and must receive CO approval before effecting any such change.

CLAUSE 10 FEDERAL STEWARDSHIP
(OCT 2018)

BPA will exercise Federal stewardship in overseeing the project activities performed under this financial assistance award. Stewardship activities include, but are not limited to, conducting site visits, reviewing performance and financial reports, providing technical assistance and/or temporary intervention in unusual circumstances to correct deficiencies which develop during the project, assuring compliance with terms and conditions of the financial assistance award, and reviewing technical performance during and after project completion to ensure that the financial assistance award objectives are being/have been accomplished.

(a) Review Meetings. The Recipient, including but not limited to the Principal Investigator (or, if

applicable, co-Principal Investigators), is required to participate in periodic review meetings with BPA. Review meetings enable BPA to assess the work performed under this financial assistance award and determine whether the Recipient has timely achieved the technical milestones and deliverables stated in this financial assistance award.

BPA shall determine the frequency of review meetings and select the day, time, and location of each review meeting.

For each review meeting, the Recipient is required to provide a comprehensive overview of the project, including:

(1) The Recipient's technical progress compared to the schedule of technical milestones and deliverables stated in Attachment 8 to this financial assistance award;
(2) The Recipient's actual expenditures compared to the approved budget in this financial assistance award; and
(3) Other subject matter specified by BPA.

(b) Project Meetings. The Recipient is required to notify BPA in advance of scheduled project meetings and tests. Upon request by BPA, the Recipient is required to provide BPA with reasonable access (by telephone, webinar, or otherwise) to the project meetings and tests. The Recipient is not expected to delay any work under this financial assistance award for the purpose of government insight.

(c) Site Visits. BPA's authorized representatives have the right to make site visits at reasonable times to review project accomplishments and management control systems; inspect property and records relating to this financial assistance award; and to provide technical assistance, if required. The Recipient must provide, and must require its subrecipients to provide, reasonable access to facilities, office space, resources, and assistance for the safety and convenience of BPA's representatives in the performance of their duties. To the maximum extent practicable, BPA will perform site visits and evaluations in a manner that does not unduly interfere with or delay project work.

CLAUSE 11 SUBSTANTIAL INVOLVEMENT
(OCT 2018)

(a) Substantial Involvement Generally. BPA has substantial involvement in work performed under this financial assistance award, as described below.

(1) The Recipient must adhere to BPA's agency-specific and programmatic requirements.
(2) BPA may intervene at any time in the conduct or performance of work under this financial assistance award.
(3) BPA does not limit its involvement to the administrative requirements of this financial assistance award. Instead, BPA has substantial involvement in the direction and redirection of the technical aspects of the project as a whole.
(4) BPA may modify or terminate projects that fail to achieve predetermined Go/No Go decision points or technical milestones and deliverables.

(b) Go/No Go Decisions. Financial assistance award establishes "Go/No Go" decision points. For each "Go/No Go" decision point, the BPA Contracting Officer must determine whether the Recipient has fully and satisfactorily completed the work described in this financial assistance award. As a result of a Go/No Go review, BPA may, at its discretion, authorize the following:

(1) Continuation of the project;

(2) Recommend redirection of work under the project;
(3) Place a hold on the project, or portions thereof, pending further supporting data;
(4) Suspend or terminate the financial assistance award due to noncompliance with the terms and conditions of the financial assistance award; or
(5) Other appropriate actions.

(c) Technical Milestones and Deliverables. The financial assistance award establishes technical milestones and deliverables. If the Recipient fails to achieve any technical milestones and deliverables, BPA may, at its discretion, renegotiate the statement of project objectives or schedule of technical milestones and deliverables. In the alternative, BPA may deem the Recipient's failure to achieve these technical milestones and deliverables to be noncompliance with the terms and conditions of this financial assistance award and suspend or terminate the financial assistance award.

(d) Technology Transfer and Outreach. BPA may provide guidance and/or assistance to the Recipient to accelerate the commercial deployment of BPA-funded technologies.

(e) General Release. The Recipient understands that any technical or other guidance or assistance provided by BPA may result in positive or negative outcomes and may have unintended or unanticipated consequences. The Recipient agrees to release the Federal Government, Federal officers and employees, contractors, and agents from any and all liability, responsibility, and claims arising out of or relating to technical or other guidance or assistance under this financial assistance award.

CLAUSE 12 NONDISCLOSURE AND CONFIDENTIALITY AGREEMENTS ASSURANCES (JUL 2017)

By entering into this financial assistance award, the Recipient attests that it does not require its employees or contractors to sign nondisclosure or confidentiality agreements which prohibit or otherwise restrict signatories from reporting the following to the DOE Inspector General:

(a) A violation of law, rule, or regulation;

(b) Mismanagement, waste, fraud, abuse; or

(c) A substantial and specific danger to public health or safety.

CLAUSE 13 FOREIGN WORK AND TRAVEL (JUL 2021)

(a) Performance of Work in the United States, and Canada. All work under this award must be performed in the United States, and/or Canada unless the Recipient receives advance written authorization from BPA to perform certain work elsewhere. If the travel location is expressly described in the SOW and Budget of the award, receipt of the financial assistance award shall be considered to be written authorization by the CO.

(b) All other travel not specified in part (a): The Recipient is required to obtain written authorization from the Contracting Officer before incurring any costs related to foreign travel. In seeking reimbursement for costs related to foreign travel, the Recipient is required to provide a report to the Contracting Officer which explains:

(1) Where the Recipient will travel;
(2) The purpose of the trip;
(3) What the Recipient will do; and

(4) How the travel relates to this Award.

CLAUSE 14 PURCHASES
(JUL 2017)

(a) Sense of Congress. To the greatest extent practicable, all equipment and products purchased with funds made available under this financial assistance award should be made in the United States.

(b) Purchase of Equipment/Supplies. Any new equipment acquired under this financial assistance award must be made or manufactured in the United States, to the maximum extent practicable. This requirement does not apply to used or leased equipment. Any supplies acquired under this financial assistance award must be made or manufactured in the United States, to the maximum extent practicable.

(c) Purchase of Foreign Equipment/Supplies. The Recipient shall notify the Contracting Officer in advance of purchasing any equipment with an acquisition cost of $25,000 or more per unit not made or manufactured in the United States. The notification shall include:

(1) A description of the equipment or supplies to be purchased;
(2) Identification of the proposed supplier;
(3) The proposed price; and
(4) Identification of the country of origin and the reason for acquiring the equipment or supplies outside of the United States.

The Contracting Officer will provide consent to purchase or reject within 30 calendar days of receipt of the Recipient's notification. If the Contracting Officer fails to respond within the timeframe above, the Recipient may proceed with the purchase.

CLAUSE 15 LOBBYING RESTRICTIONS
(JUL 2017)

By accepting funds under this award, the Recipient agrees that none of the funds obligated on the award shall be expended, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. § 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.

CLAUSE 16 EXPORT CONTROLS
(JUL 2017)

The Recipient is required to comply with U.S. export control laws and regulations in the performance of work under this financial assistance award.

CLAUSE 17 PUBLICATIONS
(JUL 2017)

BPA encourages the Recipient to publish or otherwise make publicly available the results of work performed under this Award. The Recipient is required to include the following acknowledgement in publications arising out of or relating to work performed under this Award:

> *Acknowledgment:* "The information, data, or work presented herein was funded in part by the Bonneville Power Administration under Award Number _____. The views and opinions of authors expressed herein do not necessarily state or reflect those of the United States Government or any agency thereof."

CLAUSE 18 EXTENSIONS OF PERIOD OF PERFORMANCE
(JUL 2017)

The Recipient may request an extension of the period of performance of this financial assistance award. Requests must be submitted in writing to the Contracting Officer at least 60 calendar days before the end of the project period. The Contracting Officer will promptly exercise discretion to grant or deny such requests.

CLAUSE 19 PROPERTY TRUST RELATIONSHIP AND INSURANCE COVERAGE
(JUL 2017)

(a) Property acquired in whole or in part with Federal funds under this award may not be encumbered in any way without the written permission of the Contracting Officer, who may require the recording of liens or other appropriate notices of record such property. The Recipient will ensure full replacement insurance coverage for such property.

(b) Federally-owned property provided under the financial assistance award need not be insured unless required by the terms and conditions of this financial assistance award.

CLAUSE 20 BPA FURNISHED EQUIPMENT OR MATERIAL
(JUL 2017)

(a) The recipient hereby releases and agrees to hold BPA, or persons acting upon behalf of the BPA, harmless for any and all liability of every kind and nature whatsoever resulting from the receipt, shipping, installation, operation, handling, condition, use and maintenance of the material furnished by BPA under this award.

(b) Neither BPA nor persons acting on behalf of BPA make any warranty or other representation, express or implied that the material provided under this award will accomplish the results for which it is requested or intended.

CLAUSE 21 PROPERTY – SUPPLIES AND EQUIPMENT
(AUG 2026)

(a) Supplies. The Recipient takes title to any supplies acquired in whole or in part with Federal funds under the financial assistance award.

If the total aggregate value of unused supplies is $10,000 or less at the termination, discontinuation or completion of the project or program the Recipient may retain the unused supplies with no further obligation to BPA.

If the total aggregate value of unused supplies exceeds $10,000 at the termination, discontinuation, or completion of the project and the supplies are not needed for any other financial assistance award, the Recipient may retain the supplies for use on other activities or sell them. In either case, the Recipient must compensate BPA for the BPA funded share as specified in BFAI 4.314.

Upon request by BPA, the Recipient is required to provide information on the condition, location, value, and use of remaining supplies.

(b) Equipment. Post-Award equipment purchases with an acquisition cost per unit in excess of $25,000 may be purchased only with the prior approval of the Contracting Officer. An award offer by the CO which explicitly describes a piece of equipment in the Budget shall be considered Contracting Officer approval.

The Recipient takes title to any equipment purchased in whole or in part with Federal funds subject to the following conditions:

(1) The equipment must be used for the authorized purposes of the project during the period of performance, or until the property is no longer needed for the purposes of the project;
(2) The equipment shall not be encumbered without approval of BPA; and
(3) The equipment shall be used and disposed in accordance with BFAI 4.313.

If the current per unit fair market value of particular equipment is $10,000 or less at the end of the project period (or the termination of the financial assistance award, if applicable), the Recipient may retain, sell, or otherwise dispose of the equipment with no further obligation to BPA.

If the current per unit fair market value of particular equipment exceeds $10,000 at the end of the project period (or the termination of the financial assistance award, if applicable), the equipment must be disposed of in accordance with BFAI 4.313(e)

Upon request by BPA, the Recipient is required to provide information on the condition, location, value, and use of remaining equipment.

CLAUSE 22 TITLE TO AND DISPOSITION OF PROPERTY
(OCT 2018)

(a) In this article “property” means tangible personal property acquired or fabricated under this financial assistance award, other than property actually consumed during the execution of work under this financial assistance award.

(b) Title to each item of property acquired under this financial assistance award with an acquisition value of $10,000 or less shall vest in the recipient upon acquisition with no further obligation of the Parties unless otherwise determined by the Contracting Officer. Should any item of property with an acquisition value greater than $10,000 be required, the Recipient shall obtain prior written approval of the Contracting Officer. Title to this property shall also vest in the Recipient upon acquisition. The recipient shall be responsible for the maintenance, repair, protection, and preservation of all property.

(c) At the completion of the term of this financial assistance award, items of property with a per unit fair market value greater than $10,000 shall be disposed of in accordance with the disposition requirements in BFAI 4.313.

CLAUSE 23 RECORD RETENTION
(JUL 2021)

Consistent with BFAI 4.333, the recipient is required to retain records relating to this Award for three years after the end of the project period, unless one of the following exceptions applies:

(a) If any litigation, claim, or audit is started before the expiration of the three-year period, the recipient is required to retain the records until all litigation, claims, or audit findings involving the records have been resolved and final action taken;

(b) The Recipient is required to retain records for any real property or equipment acquired with Federal funds for three years after final disposition of the real property or equipment.

Copies of records may be substituted for originals.

CLAUSE 24 AUDITS
(OCT 2018)

(a) Audits Generally. The Recipient is required to provide any information, documents, site access, or other assistance requested by BPA or Federal auditing agencies (e.g., DOE Inspector General, Government Accountability Office) for the purpose of audits and investigations. Such assistance may include, but is not limited to, reasonable access to the Recipient's records relating to this financial assistance award. BPA will provide reasonable advance notice of audits and will minimize interference with ongoing work, to the maximum extent practicable.

(b) Government Audits. Consistent with BFAI 6.503(b), BPA may audit the Recipient's financial records or administrative records relating to this financial assistance award at any time.

BPA may conduct a final audit at the end of the project period (or the termination of the financial assistance award, if applicable). Upon completion of the audit, the Recipient is required to refund to BPA any payments for costs that were determined to be unallowable.

(c) Compliance Audits for For-Profit Recipients. For-profit Recipients are required to comply with the annual compliance audit requirements in BFAI Part 6. An audit conducted in accordance with this part must be in lieu of any financial audit of BPA awards which a for-profit entity is required to undergo under any other Federal statute or regulation.

(d) Single Audits for Entities Other than For-Profit Recipients. Recipients other than for-profits are required to comply with the single audit requirements in BFAI Part 6. An audit conducted in accordance with this part must be in lieu of any financial audit of financial assistance awards the Recipient is required to undergo under any other Federal statute or regulation.

(e) If an audit is required, a copy of the audit report shall be submitted to the Federal Audit Clearinghouse.

CLAUSE 25 SUSPENSION OR TERMINATION
(JUL 2017)

(a) Definitions.

(1) "Suspension" is an action by BPA that temporarily suspends BPA support under the award pending corrective action by the Recipient or pending a decision by BPA to terminate the award.
(2) "Termination" means the cancellation of the BPA financial assistance award, in whole or in part, at any time prior to the date of completion.

(b) Suspension or Termination for Cause.

(1) Notice of Suspension. Prior to issuing a suspension notice, efforts will be made by BPA and the recipient to informally resolve disagreements. If informal efforts fail, BPA may issue a notice of suspension that specifies the date on which the suspension will take effect. During the suspension, BPA may withhold further payment and prohibit the recipient from incurring additional obligations of funds pending corrective action by the recipient or a decision by BPA to terminate. BPA shall allow all necessary and proper costs that the recipient could not reasonably avoid during the period of suspension provided that they would otherwise be allowable.

(2) Notice of Termination for Cause. Prior to issuing a termination notice, efforts will be made by BPA and the recipient to informally resolve disagreements. If informal efforts fail, BPA may issue a notice of termination that will take effect as stated in the letter. The Contracting Officer shall determine the severity of the violation that caused the termination for cause, and determine what costs are appropriate for reimbursement.

(c) Termination for Convenience. BPA or the recipient may request that the award be terminated in whole or in part when both parties agree that the continuation of the project would not produce beneficial results commensurate with the further expenditure of funds. The two parties shall agree upon the termination conditions, including the effective date and, in the case of partial terminations, the portion to be terminated. The recipient shall not incur new obligations for the terminated portion after the effective date, and shall cancel as many outstanding obligations as possible. BPA shall allow full credit to the recipient for the BPA share of the non-cancelable costs, properly incurred by the recipient prior to termination.

(d) Authority to issue notices. The Contracting Officer is the only person authorized to suspend or terminate the award.

CLAUSE 26 CLAIMS, DISPUTES, AND APPEALS
(JUL 2017)

(a) Claims. The Recipient is required to submit all claims arising out of or relating to this Award to the Contracting Officer in writing. The Recipient's written submission must contain the following information:

(1) The nature of the Recipient's claim(s) and the basis for relief, and
(2) All necessary information and documents supporting the Recipient's claim(s).

The Recipient shall negotiate in good faith with the Contracting Officer to resolve such claims.

(b) Claims for Damages. The Recipient agrees to release the Federal Government, Federal officers and employees, contractors, and agents from any and all liability, responsibility, and claims for consequential, punitive, special, or incidental damages, claims for lost profits, or other direct or indirect damages arising out of or relating to this Award.

(c) Disputes and Appeals.

(1) Informal Dispute Resolution. Whenever practicable, BPA shall attempt to resolve informally any dispute over the award or administration of Federal financial assistance. Informal resolution, including resolution through an alternative dispute resolution mechanism, shall be preferred over formal procedures, to the extent practicable.
(2) Alternative Dispute Resolution. Before issuing a final determination in any dispute in which informal resolution has not been achieved, the Contracting Officer should suggest that the other party consider the use of voluntary consensual methods of dispute resolution, such as mediation. ADR may be used at any stage of a dispute.
(3) Final Determination. Whenever a dispute is not resolved informally or through an alternative dispute resolution process, BPA shall mail (by certified mail) a brief written determination signed by a Contracting Officer, setting forth BPA's final disposition of such dispute. Such determination shall contain the following information:

(i) A summary of the dispute, including a statement of the issues and of the positions taken by

BPA and the party or parties to the dispute; and

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

(4) Right of Appeal. The final determination under paragraph (c) of this section may be appealed to the Head of the Contracting Activity (HCA). The appeal must be received by BPA within 90 days of the receipt of the final determination. The mailing address is Bonneville Power Administration, M/S CGP-7, 905 NE 11th Ave., Portland, OR, 97232.

(i) In reviewing disputes, the HCA shall be bound by applicable law, statutes, and rules, and by the terms and conditions of the award.

(ii) The decision of the HCA shall be the final decision of BPA.

UNIT 2 – FINANCIAL AND REPORTING CLAUSES

CLAUSE 27 REPORTING PROGRAM PERFORMANCE (JUL 2021)

(a) Frequency. Unusual events having a negative impact on the project should be reported to the Contracting Officer's Representative (COR) as soon as they are discovered. In addition, a status report is due monthly or as identified in the Statement of Work. A final report on the project must be submitted in accordance with the project description and project schedule but no later than 30 days after project completion.

(b) Contents. A status report template may be provided by BPA. The report should contain a comparison of the actual accomplishments to those planned for the period. If the project is not on schedule, a brief explanation of the reason is required. Unusual situations encountered which impacted the costs or effectiveness of the project should be identified and explained. Other elements to report on include items such as activities/accomplishments, challenges, financial status (estimated spending and cost share), planned activities, and overall project status (green, yellow, red).

CLAUSE 28 COST SHARING (JUL 2017)

(a) Cost Sharing Obligations. All cost share contributions must be provided in accordance with BFAI 4.306. The Recipient is required to pay the "Cost Share" amount stated in this financial assistance award. By accepting federal funds under this financial assistance award, the Recipient agrees that it is liable for its percentage of the total allowable project costs as specified below:

Government Share $/%	Prime Recipient Share $/%	Total Project Cost
(CO fill-in)	*(CO fill-in)*	*(CO fill-in)*

The Recipient is required to pay the "Cost Share" amount as a percentage of the total project costs in each invoice period for the duration of the period of performance. If the Recipient receives advance written authorization from the Contracting Officer, the Recipient may pay the "Cost Share" amount on a basis as mutually agreed by the recipient and BPA.

If the Recipient is a small business and has been granted a "Cost Share Grace Period" by BPA, the Recipient will not be required to pay cost share during the first 12 months of the period of performance. If the project is continued beyond the Cost Share Grace Period, the Recipient is required to pay at least 10% of the Total Project Cost (including the costs incurred during the Cost Share Grace Period) as cost share over the remaining period of performance.

If the project is terminated or is otherwise not funded to completion, the Recipient is not required to pay the entire "Cost Share" amount stated in this financial assistance award; however, the Recipient is required to pay its share (i.e., percentage) of the total project cost incurred to date as of the termination or end date of the financial assistance award

(b) Source of Cost Share. The Recipient may not use Federal funds to meet its cost sharing obligations, unless otherwise allowed by Federal law.

(c) Cost Share Record Keeping. The Recipient is required to document and maintain records of project

costs paid by BPA and project costs that the Recipient claims as cost sharing, including in-kind contributions. Upon request, the Recipient is required to provide such records to BPA.

(d) Inability to Comply with Cost Sharing Obligations. If the Recipient determines that it might be unable to meet its cost sharing obligations, the Recipient is required to notify the Contracting Officer in writing immediately. The notification must include the following information:

(1) Whether the Recipient intends to continue or phase out the project, and
(2) If the Recipient intends to continue the project, how the Recipient will pay (or secure replacement funding for) the Recipient's share of the total project cost.

If the Recipient fails to meet its cost sharing obligations, BPA may terminate this financial assistance award or otherwise recover some or all of the financial assistance provided.

(e) Modifying Cost Sharing Contributions. The Recipient must notify and receive written authorization from the Contracting Officer before modifying the amount of cost share contributions.

CLAUSE 29 PAYMENT REQUESTS
(AUG 2026)

(a) Only the Recipient may submit reimbursement requests to BPA. Subrecipients shall submit reimbursement requests to the Recipient, which is responsible for conveying reimbursement requests to BPA on behalf of subrecipients. Subrecipients may not submit reimbursement requests directly to BPA. The Recipient is required to submit reimbursement requests electronically through the IPP process (Invoice Processing Platform at https://www.ipp.gov/vendors/faq-vendors) or as articulated by the COR.

(b) The Recipient's submission of reimbursement requests should coincide with the Recipient's normal billing pattern. Reimbursement requests shall be made by the Recipient no later than every 30 calendar days. If reimbursement requests are received after the 30-day period, future awards may be paused at BPA's discretion. If Recipient fails to submit a request for reimbursement during any two consecutive months then the CO, in consultation with the COR and program office, may, per BFAI 4.338 (e), not issue further work as a result of noncompliance until Recipient submits invoices in arrears.

(c) Every reimbursement request submitted by the Recipient shall show the BPA share and the non-BPA cost share contribution for the invoice period, and the method by which the Recipient calculated the total BPA share and non-BPA cost share.

(d) The Recipient is required to provide BPA with additional supporting documentation verifying the Recipient's compliance with its cost sharing obligations.

CLAUSE 30 ADVANCE PAYMENT AND FINANCIAL REPORTING REQUIREMENTS
(AUG 2026)

(a) Payments under this award shall be made by advance payment by electronic funds transfer (EFT). Recipient requests for advances and recipient financial reporting requirements shall be made as follows:

(1) Advances. Advances for the anticipated needs of the project shall be made by the applicant upon submission of Standard Form 270, Request for Advance and Reimbursement, or CO-approved equivalent. .

(2) Generally, advances should be submitted electronically to the COR not more frequently than monthly, and each request cannot be for more than 90 days cash requirements.
(3) Interim Cost Reports shall be submitted to the COR quarterly, within 30 days after the end of the reporting period.
(4) Excess Funds. A prompt refund shall be made if excess funds are drawn. Exceptions are allowed when funds shall be disbursed within 7 calendar days or, if the excess is less than $10,000 and will be disbursed within 30 calendar days. Any interest earned on advance funds must be promptly refunded (except for State governments and instrumentalities and Tribes.)

CLAUSE 31 REIMBURSEMENT PAYMENT AND FINANCIAL REPORTING REQUIREMENTS (AUG 2026)

(a) Payment for services performed under this award will be reimbursed by Vendor Express payment after performance of the services. Recipient requests for reimbursements, and Recipient financial reporting requirements shall be made as follows:

(1) Reimbursements. Standard Form 270, Request for Advance and Reimbursement, or CO-approved equivalent, shall be used when requesting reimbursement for costs incurred on the project. Every request submitted must show the Federal and non-Federal cost share (if applicable), unless written authorization is provided to report compliance of cost share obligations on an alternate basis. Requests shall be made monthly and shall be submitted electronically through the IPP process (Invoice Processing Platform at https://www.ipp.gov/vendors/faq-vendors), if applicable, or as articulated by the CO and the COR. Requests shall be accompanied by:

(i) A summary of the approved budget, by line item, and cumulative expenditures by line item to date. Cost share shall be reported for the period of the request and cumulative to date.
(ii) Documentation to support payment and cost share obligations. Acceptable supporting documentation may include invoices on appropriate letterhead, timecards, travel vouchers, equipment purchase requisitions, printouts from internal financial systems, and indirect/unallowable cost justifications.

(2) Interim Cost Reports. Interim cost reports shall be submitted to the Contracting Officer's Representative (COR) semi-annually at the six-month point after the date of award.
(3) Final Cost Report. The final cost report shall be submitted to the COR within 120 calendar days after the end of the effective period. It shall be submitted in the same format as the budget as awarded. The final cost report shall compare the amounts allocated in the award budget to the amounts expended for each budget.
(4) Final Invoice. The final invoice is due no later than 120 calendar days after the end date of the period of performance.
(5) If Recipient fails to follow the outlined reporting cycle or submit a request for reimbursement during any two consecutive months then the CO, in consultation with the COR and program office, may, per BFAI 4.388 (e), not issue further work as a result of noncompliance until the Recipient submits invoices in arrears.

CLAUSE 32 BUDGET CHANGES (AUG 2026)

Any change in the total project cost shall be approved in advance and in writing by the Contracting Officer.

CLAUSE 33 INCREMENTAL FUNDING
(JUL 2017)

This project is not fully funded at the time of the award. It is anticipated that further BPA funding will be provided on an incremental basis. If funds are not available for any reason, BPA shall be under no obligation to provide funding for any additional portion of the project. If BPA does not fund the balance of the effective period, the award will be terminated when the funds committed by BPA have been expended.

CLAUSE 34 INSOLVENCY, BANKRUPTCY OR RECEIVERSHIP
(OCT 2018)

(a) The recipient shall immediately notify Bonneville of the occurrence of any of the following events:

(1) The recipient or the recipient's parent's filing of a voluntary case seeking liquidation or reorganization under the Bankruptcy Act;
(2) The recipient's consent to the institution of an involuntary case under the Bankruptcy Act against the recipient or the recipient's parent;
(3) The filing of any similar proceeding for or against the recipient or the recipient's parent, or its consent to, the dissolution, winding-up or readjustment of the recipient's debts, appointment of a receiver, conservator, trustee, or other officer with similar powers over the recipient, under any other applicable state or federal law; or
(4) The recipient's insolvency due to the recipient's inability to pay the recipient's debts generally as they become due.

(b) Such notification shall be in writing and shall:

(1) Specifically set out the details of the occurrence of an event referenced in paragraph (a);
(2) Provide the facts surrounding that event; and
(3) Provide the impact such event will have on the project being funded by this award.

(c) Upon the occurrence of any of the four events described in the paragraph (a), BPA reserves the right to conduct a review of this award to determine the recipient's compliance with the required elements of the award (including such items as cost share, progress towards technical project objectives, and submission of required reports). If the BPA review determines that there are significant deficiencies or concerns with the recipient's performance under the award, BPA reserves the right to impose additional requirements, as needed, including change your payment method or institute payment controls.

(d) Failure of the recipient to comply with this term may be considered a material noncompliance of this financial assistance award by the Contracting Officer.

UNIT 3 – OTHER CLAUSES

CLAUSE 35 NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS (JUL 2017)

The recipient shall comply with 10 CFR 1040 which provides that "…no person shall, on the ground of race, color, national origin, sex (when covered by section 16 and section 401), handicap, or age, be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or be denied employment, where a primary purpose of the Federal financial assistance is to provide employment or when the delivery of services is affected by the recipient's employment practices (under section 504, all grantee and subgrantee employment practices are covered regardless of the purpose of the program), in connection with any program or activity receiving Federal financial assistance from the Bonneville Power Administration)."

CLAUSE 36 ENVIRONMENTAL PROTECTION (JUL 2021)

The recipient agrees to comply with all applicable Federal environmental laws including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Resource Conservation and Recovery Act (RCRA), the Toxic Substances Control Act (TSCA), the Hazardous Materials Transportation Act (HMTA), the Federal Water Pollution Control Act (CWA), the Clean Air Act, the National Environmental Policy Act (NEPA), the Endangered Species Act (ESA), and the National Historic Preservation Act (NHPA), and their implementing regulations, guidance, protocols, and related executive orders, and applicable State equivalents. The recipient shall indemnify and hold BPA harmless, and shall be solely responsible for any cost (including but not limited to penalties, fees, assessments, damages, remediation costs, attorney fees, etc.), and for performing any corrective actions (including but not limited to response actions and actions required in administrative penalties or orders), arising from any act or omission of the recipient and its subcontractors, employees, or agents that is in violation of the environmental laws or protections described above.

If this award is for a grant (not a cooperative agreement), then the recipient is solely responsible for environmental compliance obligations related to the grant.

CLAUSE 37 ENDANGERED SPECIES ACT REQUIREMENTS (JUL 2021)

(a) To the extent requested by BPA, the recipient shall:

(1) Participate with BPA in consultations and conferences conducted under Section 7 of the Endangered Species Act (ESA) as requested, including but not limited to potentially acting as BPA's designated representative in preparing documents for BPA's review, approval, and submission to the Services, as appropriate;

(2) Provide to BPA all information, materials, documents, records and other assistance requested by BPA for such consultations and conferences.

(b) The recipient shall not proceed with action/activities in this agreement until completion of requisite ESA Section 7 consultations and conferences, and shall comply with the terms and conditions of letters of concurrence or biological opinions issued by the Services. Recipients whose activities require a Section 10 permit or 4(d) authorization shall apply for such permit or authorization (sometimes in conjunction with BPA's initiation of Section 7 consultation) and shall be solely responsible for holding the permit and conducting work under the terms and conditions of the permit or authorization.

CLAUSE 38 NEPA REQUIREMENTS
(JUL 2021)

(a) NEPA Generally. Consistent with DOE's National Environmental Policy Act ("NEPA") Implementing Regulations (10 C.F.R. Part 1021), BPA is required to assess the impact of the work under this financial assistance award on the human environment and determine whether the work requires the preparation of an Environmental Assessment ("EA") or Environmental Impact Statement ("EIS"), or is categorically excluded from preparation of either an EA or EIS.

The Recipient is required to provide any information, documents, site access, or other assistance requested by BPA.

(b) Significant Changes to Scope of Work. Significant changes to the scope of work under this financial assistance award may require BPA to re-evaluate the impact of the work under this financial assistance award on the human environment and conduct further environmental review under NEPA.

CLAUSE 39 FELONY CONVICTION AND FEDERAL TAX LIABILITY ASSURANCES
(JUL 2017)

By entering into this agreement, the Recipient attests that it has not been convicted of a felony criminal violation under Federal law in the 24 months preceding the date of signature.

The Recipient further attests that it does not have any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

CLAUSE 40 DRUG–FREE WORKPLACE REQUIREMENTS FOR FINANCIAL ASSISTANCE AWARDS
(JUL 2017)

(a) Drug-free workplace requirement

(1) Persons other than individuals. No person, other than an individual, shall receive an award from any Federal agency unless such person agrees to provide a drug-free workplace by—

(i) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the awardee's workplace and specifying the actions that will be taken against employees for violations of such prohibition;
(ii) Making a good faith effort to continue to maintain a drug-free workplace through implementation and maintenance of a drug awareness program.

(2) Individuals. BPA shall not make an award to any individual unless such individual agrees as a condition of such award that the individual will not engage in the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance in conducting any activity with such award.

(b) Suspension, termination, or debarment of awardee. Grounds for suspension, termination, or debarment. Each financial assistance award by BPA shall be subject to suspension of payments under the award or termination of the award, or both, and the awardee thereunder shall be subject to suspension or debarment, if the agency head of the awarding agency or his official designee

determines, in writing, that the awardee violates the requirements of the drug free policy.

(c) Employee sanctions and remedies. An awardee shall, within 30 days after receiving notice from an employee of a conviction of a drug related offense—

(1) Take appropriate personnel action against such employee up to and including termination; or
(2) Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by Federal, State, or local health, law enforcement, or other appropriate agency.

CLAUSE 41 INTANGIBLE PROPERTY
(OCT 2018)

(a) The Recipient must use intangible property acquired under this award for the originally-authorized purpose, and must not encumber the property without approval of Bonneville. When no longer needed for the originally authorized purpose, disposition of the intangible property must occur in accordance with the Bonneville Financial Assistance Instructions 4.313 Equipment paragraph (e).

(b) The recipient may copyright any work that is subject to copyright protection under 17 U.S.C. § 102 and was developed, or for which ownership was acquired, under a financial assistance award. Bonneville reserves a paid-up royalty-free, nonexclusive, nontransferable, irrevocable, worldwide license to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, or otherwise use the work for Bonneville purposes, and to authorize others to do so on behalf of Bonneville.

(c) Bonneville has the right to:

(1) Obtain, reproduce, publish, or otherwise use the data produced under a financial assistance award; and
(2) Authorize others to receive, reproduce, publish, or otherwise use such data for Bonneville purposes.

CLAUSE 42 RIGHTS IN DATA
(AUG 2026)

(a) Except as otherwise provided herein, the Recipient grants to Bonneville a fully paid-up, non-exclusive, irrevocable, worldwide, perpetual license to copy, prepare derivative works and perform or display publicly, by or on behalf of Bonneville, for all the material or subject matter produced under this financial assistance award, hereinafter referred to as Work Product. Work Product means recorded information, regardless of form or the media on which it is stored, including any other copyrightable products or materials arising from performance under this award.

(b) Recipient shall hold Bonneville harmless from any claim or suit brought against Bonneville alleging that the Work Product infringes a U.S. patent or copyright, violates trade secrets, rights of privacy, or any libelous or other unlawful matter contained in such Work Product, provided Recipient is given prompt written notice of such claim and is given information, reasonable assistance, and sole authority to defend or settle the claim. Notwithstanding the foregoing, it is understood that institutions of higher learning may only indemnify in the manner and to the extent provided by their respective state law.

CLAUSE 43 INDEMNITY
(OCT 2018)

Each party shall be responsible for its own negligent acts or omissions and the negligent acts of its employees, officers, or directors to the extent allowed by law.

CLAUSE 44 ENVIRONMENTAL, SAFETY, AND HEALTH
(OCT 2018)

(a) With respect to the performance of any portion of the work under this financial assistance award, the recipient agrees to comply with all State and Federal Environmental, Safety and Health regulations.

(b) The recipient shall apply this term to its sub-recipients.

CLAUSE 45 SMALL UNMANNED AIRCRAFT (UAS)
(AUG 2026)

(a) Recipients shall not use BPA funds to procure UAS that present unacceptable risks and are manufactured by, or contain software or critical electronic components from, foreign adversaries, per Executive Order (E.O.) 13981, “Protecting the United States From Certain Unmanned Aircraft Systems”.

(b) Recipients shall validate their proposed UAS is in “covered foreign entity” compliance through the Consolidated Screening List (https://www.trade.gov/consolidated-screening-list) maintained by the Federal Acquisition Security Council (FASC).

(c)To operate the controls of a small Unmanned Aerial System (UAS), a remote pilot shall have an airman certificate with a small UAS rating, or be under the direct supervision of a person who holds such a certificate and ensures the UAS provider does not have any open FAA actions against it. Visual line-of-sight (VLOS) only; the unmanned aircraft must remain within VLOS of the remote pilot in command and the person manipulating the flight controls of the small UAS. The small UAS operator manipulating the controls of a drone should always avoid manned aircraft and never operate in a careless or reckless manner. Daylight-only operations or civil twilight (30 minutes before official sunrise to 30 minutes after official sunset, local time) with appropriate anti-collision lighting. BPA strongly encourages all UAS pilots to check local and state laws before gathering information through remote sensing technology or photography with regard to privacy issues. Ensure that you have prior approval before entering private property during the course of the flight. Drone shall be available to BPA for inspection or testing on request, and provide any associated records. Report to the BPA within 10 days any operation that results in serious injury, loss of consciousness, or property damage (to property other than the UAS) of at least $500.

CLAUSE 46 CLOSEOUT
(AUG 2026)

(a) BPA or the pass-through entity closes out the BPA award when it determines that all applicable administrative actions and all required work of the BPA award have been completed by the recipient. If the recipient fails to complete the requirements, BPA or the pass-through entity proceeds to close out the BPA award with the information available. This section specifies the actions the recipient and BPA or the pass-through entity takes to complete this process at the end of the period of performance.

(b) The recipient submits, no later than 120 calendar days after the end date of the period of performance, the final invoice (or request for reimbursement) along with all financial, performance, and other reports as required by the terms and conditions of the BPA award. A subrecipient submits to the pass-through entity, no later than 90 calendar days (or an earlier date as agreed upon by the pass-through entity and subrecipient) after the end date of the period of performance, all financial, performance, and other reports as required by the terms and conditions of the BPA award. BPA or the pass-through entity may approve extensions when requested and justified by the recipient, as applicable.

(c) Unless BPA or the pass-through entity authorizes an extension, a recipient shall liquidate all financial obligations incurred under the BPA award no later than 120 calendar days after the end date of the period of performance as specified in the terms and conditions of the BPA award.

(d) BPA or the pass-through entity makes prompt payments to the recipient for costs meeting the requirements in BFAI Part 5—Cost Principles under the BPA award being closed out.

(e) The recipient promptly refunds any balances of unobligated cash that BPA or pass-through entity paid in advance or paid and that are not authorized to be retained by the recipient for use in other projects. See OMB Circular A-129 and see BFAI 4.345 Collection of amounts due, for requirements regarding unreturned amounts that become delinquent debts.

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

(g) The recipient accounts for any real and personal property acquired with Federal funds or received from BPA in accordance with BFAI 4.310 Insurance coverage through BFAI 4.316 Property trust relationship and BFAI 4.329 Reporting on real property.

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

(i) If the recipient does not submit their final invoice or request for reimbursement and all reports in accordance with this section and the terms and conditions of the BPA award, then BPA proceeds to close out with the information available within one year of the end date of the period of performance.

(j) If the recipient does not submit all final invoices and reports in accordance with this section within one year of the end date of the period of performance, then additional requirements may be imposed upon the recipient or future financial assistance awards may be withheld, per BFAI 3.207 Specific conditions and BFAI 4.338 (e) Remedies for Noncompliance.

CLAUSE 47 NATIONAL HISTORIC PRESERVATION ACT REQUIREMENTS (JUL 2021)

(a) To the extent requested by BPA, the recipient shall:

(1) Provide all relevant information to assist BPA in complying with Section 106 of the NHPA, including, but not limited to project descriptions, design drawings, maps, delineating project footprint, and GIS (spatial) data.

(b) The recipient shall not conduct activities related to Section 106 consultation or inherently governmental functions including but not limited to identification of the Area of Potential Effects (APE), drafting consultation letters, or contacting consulting parties on behalf of BPA.

(c) The recipient shall not proceed with actions/activities in this award until BPA completes the requisite Section 106 compliance and notifies the recipient of completion. The recipient shall comply with terms and conditions identified by BPA during the Section 106 compliance process.

(d) If requested by BPA, the recipient may enter into an agreement with a sub-contractor to provide cultural resources services to identify cultural resources within the APE including but not limited to background research and literature review, pedestrian survey, subsurface testing of high probability areas, historic structure and linear resources system evaluation, and preparation of reporting deliverables (inventory report, state-required forms, spatial data, maps, etc.) documenting findings.

(1) The recipient should coordinate with BPA prior to entering into an agreement to ensure BPA, state and other federal requirements will be met.

(2) The recipient should coordinate with BPA to ensure BPA is provided the opportunity to review draft deliverables before they are finalized. The recipient should ensure that the subcontract remains open until BPA provides notification that the Section 106 compliance process has been completed.

(e) Significant Changes to Scope of Work. Significant changes to the scope of work under this financial assistance award may require BPA to re-evaluate the impact of the work under this financial assistance award and conduct further review under NHPA.

CLAUSE 48 [Reserved]

CLAUSE 49 [Reserved]

CLAUSE 50 BUY AMERICA REQUIREMENT FOR INFRASTRUCTURE PROJECTS (FEB 2023)

(a) Definitions

Components are defined as the articles, materials, or supplies incorporated directly into the end manufactured product(s).

Construction Materials are an article, material, or supply—other than an item primarily of iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives—that is used in an infrastructure project and is or consists primarily of non-ferrous metals, plastic and polymer-based products (including polyvinyl chloride, composite building materials, and polymers used in fiber optic cables), glass (including optic glass), lumber, drywall, coatings (paints and stains), optical fiber, clay brick; composite building materials; or engineered wood products.

Domestic Content Procurement Preference Requirement means a requirement that no amounts made available through a program for federal financial assistance may be obligated for an infrastructure project unless:

(1) all iron and steel used in the project are produced in the United States;

(2) the manufactured products used in the project are produced in the United States; or

(3) the construction materials used in the project are produced in the United States.

Also referred to as the **Buy America Requirement**.

Infrastructure includes, at a minimum, the structures, facilities, and equipment located in the United States, for: roads, highways, and bridges; public transportation; dams, ports, harbors, and other maritime facilities; intercity passenger and freight railroads; freight and intermodal facilities; airports; water systems, including drinking water and wastewater systems; electrical transmission facilities and systems; utilities; broadband infrastructure; and buildings and real property; and generation, transportation, and distribution of energy-including electric vehicle (EV) charging.

The term “infrastructure” should be interpreted broadly, and the definition provided above should be considered as illustrative and not exhaustive.

Manufactured Products are items used for an infrastructure project made up of components that are not primarily of iron or steel; construction materials; cement and cementitious materials’ aggregates such as stone, sand, or gravel; or aggregate binding agents or additives.

Primarily of iron or steel means greater than 50% iron or steel, measured by cost.

Project means the construction, alteration, maintenance, or repair of infrastructure in the United States.

Public The Buy America Requirement does not apply to non-public infrastructure. For purposes of this guidance, infrastructure should be considered “public” if it is: (1) publicly owned or (2) privately owned but utilized primarily for a public purpose. Infrastructure should be considered

to be “utilized primarily for a public purpose” if it is privately operated on behalf of the public or is a place of public accommodation.

(b) Buy America Requirement

None of the funds provided under this award (BPA share or recipient cost-share) may be used for a project for infrastructure unless:

(1) All iron and steel used in the project is produced in the United States—this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;

(2) All manufactured products used in the project are produced in the United States—this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and

(3) All construction materials are manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States.

The Buy America Requirement only applies to articles, materials, and supplies that are consumed in, incorporated into, or permanently affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought into the construction site and removed at or before the completion of the infrastructure project. Nor

does a Buy America Requirement apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment that are used at or within the finished infrastructure project but are not an integral part of the structure or permanently affixed to the infrastructure project.

Recipients are responsible for administering their award in accordance with the terms and conditions, including the Buy America Requirement. The recipient must ensure that the Buy America Requirement flows down to all subawards and that the subawardees and subrecipients comply with the Buy America Requirement. The Buy America Requirement term and condition must be included all sub-awards, contracts, subcontracts, and purchase orders for work performed under the infrastructure project.

(c) Certification of Compliance

Recipients must certify or provide equivalent documentation for proof of compliance that a good faith effort was made to solicit bids for domestic products used in the infrastructure project under this award.

Recipients must also maintain certifications or equivalent documentation for proof of compliance that those articles, materials, and supplies that are consumed in, incorporated into, affixed to, or otherwise used in the infrastructure project, not covered by a waiver or exemption, are produced in the United States. The certification or proof of compliance must be provided by the suppliers or manufacturers of the iron, steel, manufactured products and construction materials and flow up from all subawardees, contractors and vendors to the recipient. Recipients must keep these certifications with the award/project files and be able to produce them upon request from BPA, auditors or Office of Inspector General.

(d) Waiver

When necessary, recipients may apply for, and BPA may grant, a waiver from the Buy America Requirement. Requests to waive the application of the Buy America Requirement must be in writing to the CO.

Waivers must be based on one of the following justifications:

(1) Public Interest: Applying the Buy America Requirement would be inconsistent with the public interest;

(2) Non-Availability: The types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality; or

(3) Unreasonable Cost: The inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent.

Requests to waive the Buy America Requirement must include the following:

- Waiver type (Public Interest, Non-Availability, or Unreasonable Cost);
- Recipient name;
- A brief description of the project, its location, and the specific infrastructure involved;
- Total estimated project cost, with estimated BPA share and recipient cost share breakdowns;

- Total estimated infrastructure costs, with estimated BPA share and recipient cost share breakdowns;
- List and description of iron or steel item(s), manufactured goods, and/or construction material(s) the recipient seeks to waive from the Buy America Preference, including name, cost, quantity(ies), country(ies) of origin, and relevant Product Service Codes (PSC) and North American Industry Classification System (NAICS) codes for each;
- A detailed justification as to how the non-domestic item(s) is/are essential the project;
- A certification that the recipient made a good faith effort to solicit bids for domestic products supported by terms included in requests for proposals, contracts, and non-proprietary communications with potential suppliers;
- A justification statement—based on one of the applicable justifications outlined above—as to why the listed items cannot be procured domestically, including the due diligence performed (e.g., market research, industry outreach, cost analysis, cost-benefit analysis) by the recipient to attempt to avoid the need for a waiver. This justification may cite, if applicable, the absence of any Buy America-compliant bids received for domestic products in response to a solicitation; and
- Anticipated impact to the project if no waiver is issued.

BPA may request, and the recipient must provide, additional information for consideration of this wavier. BPA may reject or grant waivers in whole or in part depending on its review, analysis, and/or feedback. BPA's final determination regarding approval or rejection of the waiver request may not be appealed. Waiver requests may take up to 90 calendar days to process.

UNIT 4 – STATUTORY AND NATIONAL POLICY REQUIREMENTS

Financial assistance awards are subject to the following statutory and national policy requirements below. By signing or accepting the funds under the financial assistance award, the recipient agrees that it will comply with applicable provisions below.

Description	Type of Award	Type of Recipient	Specific Situation	Flow Down Requirements
NONDISCRIMINATION				
On the basis of race, color, or national origin, in Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d, et seq.), as implemented by: 10 CFR Part 1040	All	All	All	Requirements flow down to subrecipients.
On the basis of sex or blindness, in Title IX of the Education Amendments of 1972 (20 U.S.C. 1681, et seq.). 10 CFR Part 1040	All	Educational institution [for sex discrimination, excepts all Institution controlled by religious organization, when inconsistent with the organization's religious tenets].		
On the basis of age, in the Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.), as implemented by Department of Health and Human Services regulations at 45 CFR part 90. 10 CFR Part 1040	Grants, cooperative agreements, and other awards defined at 45 CFR 90.4 as "Federal financial assistance."	All	All	Requirements flow down to subrecipients.
On the basis of handicap, in: 1. Section 504 of the Rehabilitation Act of 1973 (29 USC 794), as implemented by Department of Justice regulations at 28 CFR Part 41 and 10 CFR Part 1040.	Grants, cooperative agreements, and other awards included in "Federal financial assistance"	All	All	Requirements flow down to subrecipients.

Description	Type of Award	Type of Recipient	Specific Situation	Flow Down Requirements
2. The Architectural Barriers Act of 1968 (42 USC 4151, et seq.).	Grant or loan	All	Construction or alteration of buildings or facilities, except those restricted to use only by able-bodied uniformed personnel.	
3. Americans with Disabilities Act. 42 USC 12101 et. seq	All	All		
LIVE ORGANISMS				
For human subjects:				
For human subjects, the Common Federal Policy for the Protection of Human Subjects. Codified by the: 10 CFR Part 745	All	All	Research, development, test, or evaluation involving live human subjects.	Requirements flow down to subrecipients
P.L. 104-191 Health Insurance Portability and Accountability Act (HIPAA)	As applicable	Covered Entities	As applicable	Limits uses of protected health information (PHI) collected or maintained by researchers within a covered entity or access to PHI from a covered entity. Research uses do not require Business Associate Agreements (defined at 45 CFR part 164 504 (e)(1) between collaborating institutions. Guidance available at http://privacyruleandresearch.nih.gov/
For animals:	All	All		Requirements flow down to subrecipients.

Description	Type of Award	Type of Recipient	Specific Situation	Flow Down Requirements
Rules on animal acquisition, transport, care, handling, and use in: (i) 9 CFR Parts 1-4, Department of Agriculture rules that implement the Laboratory Animal Welfare Act of 1966 (7 US+A160C. 2131-2156). Public Health Service Agencies must follow requirements in the PHS Policy on Humane Care and Use of Laboratory Animals, which implements PL 99-158, Sec. 495. NASA requirements for animal welfare are set forth at 14 CFR Part 1232 EPA at 40 CFR Part 40. For USDA/CSREES, "In the case of domestic farm animals housed under farm conditions, the institution should adhere to the principles stated in the Guide for the Care and Use of Agricultural Animals in Agriculture and Teaching, Federation of Animal Science Societies, 1999."	All	All	Research, experimentation, or testing involving the use of animals USDA regulations exempt birds, most rats and mice bred for research, and farm animals used for agricultural research.	
Rules of the Departments of Interior (50 CFR Parts 10-24) and Commerce (50 CFR Parts 217-227) implementing laws and conventions on the taking, possession, transport, purchase, sale, export, or import of wildlife and plants, including the: Endangered Species Act of 1973 (16 U.S.C. 1531-1543); Marine Mammal Protection Act (16 U.S.C. 1361-1384); Lacey Act (18 U.S.C. 42); and Convention on International Trade in Endangered Species of Wild Fauna and Flora.	All	All	Activities which may involve or impact wildlife and plants.	
ENVIRONMENTAL STANDARDS				
Comply with applicable provisions of the Clean Air Act (42 U.S.C. 7401, et. Seq.) and Clean Water Act (33 U.S.C. 1251, et. seq.), as implemented by Executive Order 11738 [3 CFR, 1971-1975 Comp., p. 799]. 40 CFR Part 6	All	All	All, for Clean Air Act, Clean Water Act, and Executive Order 11738.	Requirements flow down to subrecipients.

Description	Type of Award	Type of Recipient	Specific Situation	Flow Down Requirements
The quality of the human environment, and provide help the agency may need to comply with the National Environmental Policy Act (NEPA, at 42 U.S.C. 4321, et. seq.) and to prepare Environmental Impact Statements or other required environmental documentation. In such cases, the recipient agrees to take no action that will have an adverse environmental impact (e.g., physical disturbance of a site such as breaking of ground) until the agency provides written notification of compliance with the environmental impact analysis process. 10 CFR Part 1021				
Flood-prone areas, and provide help the agency may need to comply with the National Flood Insurance Act of 1968 and Flood Disaster Protection Act of 1973 (42 U.S.C. 4001, et. seq.), which require flood insurance, when available, for Federally assisted construction or acquisition in flood-prone areas. 10 CFR Part 1022	All	All	Awards involving construction, land acquisition or development, with some exceptions [see 42 U.S.C. 4001, et. seq.].	The Council on Environmental Quality's regulations for implementing NEPA are at 40 C.F.R. Parts 1500-1508. Executive Order 11514 [3 CFR, 1966-1970 Comp., p. 902], as amended by Executive Order 11991, sets policies and procedures for considering actions in the U.S. Executive Orders 11988 [3 CFR, 1977 Comp., p. 117] and 11990 [3 CFR, 1977 Comp., p. 121] specify additional considerations, when actions involve floodplains or wetlands, respectively.
All existing or proposed components of the National Wild and Scenic Rivers system, and provide help the agency may need to comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C.1271, et seq.). 40 CFR Part 6	Grants, cooperative agreements, and other "financial assistance" (see 16 U.S.C. 3502).	All	Awards that may affect existing or proposed element of National Wild and Scenic Rivers system.	Requirements flow to subrecipients.

Description	Type of Award	Type of Recipient	Specific Situation	Flow Down Requirements
Underground sources of drinking water in areas that have an aquifer that is the sole or principal drinking water source, and provide help the agency may need to comply with the Safe Drinking Water Act (42 U.S.C. 300h-3). 40 CFR Part 6	All	All	Construction in All area with aquifer that the EPA finds would create public health hazard, if contaminated.	42 U.S.C. 300h-3(e) precludes awards of Federal financial assistance for all projects that the EPA administrator determines may contaminate a sole-source aquifer so as to threaten public health.
Resource Conservation and Recovery Act 42 USC 6901	All	Awards to states or a political subdivision of a state (which for this purpose includes state and local institutions of higher education or hospitals)		
HEALTH & SAFETY GUIDELINES				
Applicable OSHA Standards in Laboratories 29 CFR 1910.1030 Bloodborne Pathogens; 29 CFR 1910.1450, Occupational Exposure to Hazardous Chemicals in Laboratories	All	All	Research involving use of hazardous chemicals or bloodborne pathogens	
Handling and transport of etiologic agents Procedures for Domestic Handling and Transport of Diagnostic Specimens and Etiologic Agents, 1994 (3rd ed.), H5a3doc.75, National Committee for Clinical Laboratory Standards	All	All	Research involving etiologic agents	
Hotel and Motel Fire Safety Act of 1990 - P.L. 101-39 40 USC 327-333	Conference or meeting support	All	Alterations and Renovations > $500,000	
Labor Standards under Federally Assisted Construction: Construction Work Hours and Safety Standards Act 40 USC 327-333	All	All	Alterations and Renovations > $500,000	

Description	Type of Award	Type of Recipient	Specific Situation	Flow Down Requirements
Text Messaging While Driving - EO 13513	All	All	When performing work for or on behalf of government	Adopt and enforce policies that ban text messaging while driving.
Increasing Seat Belt Use in the United States Executive Order 13043, Increasing Seat Belt Use in the United States, dated, April 16, 1997	All	All		In accordance with the Executive Order, "grantees are encouraged to adopt and enforce on-the-job seat belt policies and programs for their employees when operating company-owned, rented, or personally owned vehicles."
NATIONAL SECURITY GUIDELINES				
Executive Order 13224, Blocking Property and Prohibiting Transactions with Persons who Commit, Threaten to Commit, or Support Terrorism, dated September 23, 2001.	All			
GENERAL/MISCELLANEOUS REQUIREMENTS				
Drug Free Workplace 41 USC 701 et seq. 10 CFR Part 607	All	All		
Civil False Claims Act 31 USC 2739	All	All	All	
Criminal False Claims Act 18 USC 287 and 1001 31 USC 3801, 45 CFR 79	All	All	All	
Government-wide Debarment and Suspension (Nonprocurement) 10 CFR 1036	All	All		

Description	Type of Award	Type of Recipient	Specific Situation	Flow Down Requirements
Lobbying Prohibitions 31 USC 1352, stipulates that (1) No Federal appropriated funds have been paid or will be paid, any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement. (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit the SF Form LLL, "Disclosure of Lobbying Activities", in accordance with its instructions. 10 CFR Part 601	All			Requirements flow down to construction subrecipients.
Metric System 15 USC 205 and Executive Order 12770	All	All	All	
Misconduct in Science Policies and responsibilities associated with prevention, detection, and handling of misconduct in science allegations as stipulated in regulations: 10 CFR Part 733 [Federal Register: December 6, 2000 (Volume 65, Number 235)] [Notices] [Page 76260-76264]	All	All	All	

Description	Type of Award	Type of Recipient	Specific Situation	Flow Down Requirements
National Historic Preservation The recipient agrees to identify to the awarding agency all property listed or eligible for listing on the National Register of Historic Places that will be affected by this award, and to provide all the help the awarding agency may need, with respect to the award. 16 USC 470f	All	All	All	
Paperwork Reduction Act 44 USC 3501	All	All	When data is collected from respondents using a questionnaire or other survey instrument. See, however, M-11-07 dated 12/9/10 entitled, "Facilitating Scientific Research by Streamlining the Paperwork Reduction Act Process."	Data collection activities, if any, performed under this project are the responsibility of the recipient, and awarding agency support of the project does not constitute approval of any survey design, questionnaire content, or data collection procedures. The recipient shall not represent to respondents that such data are being collected for or in association with Bonneville without the specific written approval of the Bonneville CO. However, this requirement is not intended to preclude mention of Bonneville support of the project in response to an inquiry or acknowledgment of such support in any publication of these data.

Description	Type of Award	Type of Recipient	Specific Situation	Flow Down Requirements
U.S. Flag Air Carriers 49 USC 40118 See also General Services Administration amendment to the Federal Travel Regulations, Federal Register (Vol. 63, No. 219, 63417-63421)	All	All	Any air transportation to, from, between, or within a country other than the U.S. of persons or property, the expense of which will be assisted by Federal funding, must be performed by or under a code-sharing arrangement with a U.S.-flag air carrier if service provided by such a carrier is available (see Comp Gen. Decision B-240956, dated September 25, 1991).	
Trafficking in Persons By signing or accepting funds under the agreement, the recipient agrees that it will comply with Trafficking Victims Protection Act of 2000 (22 U.S.C. 7104(g)) as implemented by 2 CFR Part 175, Appendix A.	All	175.15I(a) applies to private entities 175.15(b)I.b. applies to other than private entities if award includes subrecipient award to a private entity 117.15(b)I.c. applies to all recipients		Requirements flow down to subrecipients.
Whistleblower Protection Awardees are notified of the applicability of 41 U.S.C. § 4712, as amended by P.L. 112-239, providing protection for whistleblowers.	All	All	All	

Description	Type of Award	Type of Recipient	Specific Situation	Flow Down Requirements
Use of United States Flag Vessels 46 CFR 381	All	All		
Patents, Trademarks and Copyrights 35 USC 202-204 and 37 CFR 401	All	Awards to non-profits and small businesses		
Privacy Act 5 USC 552a	All	All		
Pro Children Act 20 USC 7183	All	All	All awards performed in facilities where children are served.	
Uniform Relocation Assistance and Real Property Acquisition Policies Act 42 USC 4601 and 49 CFR 24	All	All		
Constitution Day PL 108-447	All	Educational Institutions		
Copeland Act 40 USC 4135	All	All		
Davis Bacon Act 40 USC 3141 et. seq	All	All		
Earthquake Hazards Reduction Act 42 USC 7701 et seq., EO 12699	All	All	Construction awards within applicable geographic areas	
Freedom of Information Act 5 USC 552	All	All		
Hatch Act 5 USC 7321-7328	All	State or Local Governments		
Limited English Proficiency EO 13166	All	All		
Native American Graves Protection and Repatriation 25 USC 3001-3013	All	All		

UNIT 5 – PROJECT DESCRIPTION

UNIT 6 – PROJECT BUDGET

PART 8—FORMS

Micro-Grant Award
(BPA F 4220.37 | Revised: 02/23/2021)

Appendices

Appendix I—Full Text of Announcement of Availability of Funding Opportunity

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

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

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

The sections of the full text of the announcement are described in the following paragraphs.

A. Program Description—Required

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

B. Financial assistance award Information—Required

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

This section also must indicate the type(s) of assistance instrument (e.g., grant, cooperative agreement) that may be awarded if applications are successful. If cooperative agreements may be awarded, this section either should describe the “substantial involvement” that BPA expects to have or should reference where the potential applicant can find that information (e.g., in the funding

opportunity description in A. Program Description—Required or financial assistance award administration information in Section D. Application and Submission Information).

C. Eligibility Information

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

1. *Eligible Applicants—Required.* Announcements must clearly identify the types of entities that are eligible to apply. If there are no restrictions on eligibility, this section may simply indicate that all potential applicants are eligible. If there are restrictions on eligibility, it is important to be clear about the specific types of entities that are eligible, not just the types that are ineligible. For example, if the program is limited to nonprofit organizations subject to 26 U.S.C. 501(c)(3) of the tax code (26 U.S.C. 501(c)(3)), the announcement should say so. Similarly, it is better to state explicitly that Native American tribal organizations are eligible than to assume that they can unambiguously infer that from a statement that nonprofit organizations may apply. Eligibility also can be expressed by exception, (e.g., open to all types of domestic applicants other than individuals). This section should refer to any portion of Section D specifying documentation that must be submitted to support an eligibility determination (e.g., proof of 501(c)(3) status as determined by the Internal Revenue Service or an authorizing tribal resolution). To the extent that any funding restriction in Section D.6 could affect the eligibility of an applicant or project, the announcement must either restate that restriction in this section or provide a cross-reference to its description in Section D.6.

2. *Cost Sharing or Matching—Required.* Announcements must state whether there is required cost sharing, matching, or cost participation without which an application would be ineligible (if cost sharing is not required, the announcement must explicitly say so). Required cost sharing may be a certain percentage or amount, or may be in the form of contributions of specified items or activities (e.g., provision of equipment). It is important that the announcement be clear about any restrictions on the types of cost (e.g., in-kind contributions) that are acceptable as cost sharing. Cost sharing as an eligibility criterion includes requirements based in statute or regulation, as described in 4.306 Cost sharing or matching of this Part. This section should refer to the appropriate portion(s) of section D. Application and Submission Information stating any pre-award requirements for submission of letters or other documentation to verify commitments to meet cost-sharing requirements if a financial assistance award is made.

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

D. Application and Submission Information

1. *Address to Request Application Package—Required.* Generally the full announcement should be provided along with any required forms necessary to apply. If not, potential applicants must be told how to get application forms, kits, or other materials needed to apply (if this announcement contains everything needed, this section need only say so). An Internet address where the materials can be accessed is acceptable.

2. *Content and Form of Application Submission—Required.* This section must identify the required content of an application and the forms or formats that an applicant must use to submit it. If any requirements are stated elsewhere because they are general requirements that apply to multiple programs or funding opportunities, this section should refer to where those requirements may be found. This section also should include required forms or formats as part of the announcement or state where the applicant may obtain them. This section should specifically address content and form or format requirements for:

   i. Pre-applications, letters of intent, or white papers required or encouraged (see Section D.4), including any limitations on the number of pages or other formatting requirements similar to those for full applications.

   ii. The application as a whole. For all submissions, this would include any limitations on the number of pages, font size and typeface, margins, paper size, number of copies, and sequence or assembly requirements. If electronic submission is permitted or required, this could include special requirements for formatting or signatures.

   iii. Component pieces of the application (e.g., if all copies of the application must bear original signatures on the face page or the program narrative may not exceed 10 pages). This includes any pieces that may be submitted separately by third parties (e.g., references or letters confirming commitments from third parties that will be contributing a portion of any required cost sharing).

   iv. Information that successful applicants must submit after notification of intent to make a financial assistance award, but prior to a financial assistance award. This could include evidence of compliance needed to comply with the National Environmental Policy Act (NEPA) (42 U.S.C. 4321-4370h).

3. [Reserved]

4. *Submission Dates and Times—Required.* Announcements must identify due dates and times for all submissions. This includes not only the full applications but also any preliminary submissions (e.g., letters of intent, white papers, or pre-applications). It also includes any other submissions of information before financial assistance award that are separate from the full application. If the funding opportunity is a general announcement that is open for a period of time with no specific due dates for applications, this section should say so. Note that the information on dates that is included in this section also must appear with other overview information in a location preceding the full text of the announcement (see 3.203 *Announcement of availability of funding opportunity*).

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

i. Any deadline in terms of a date and local time. If the due date falls on a Saturday, Sunday, or Federal holiday, the reporting package is due the next business day.

ii. What the deadline means (e.g., whether it is the date and time by which BPA must receive the application, the date by which the application must be postmarked, or something else) and how that depends, if at all, on the submission method (e.g., mail, electronic, or personal/courier delivery).

iii. The effect of missing a deadline (e.g., whether late applications are neither reviewed nor considered or are reviewed and considered under some circumstances).

iv. How BPA determines whether an application or pre-application has been submitted before the deadline. This includes the form of acceptable proof of mailing or system-generated documentation of receipt date and time.

5. [Reserved]

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

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

   This section also must indicate where applications (and any pre-applications) must be submitted if sent by postal mail, electronic means, or hand-delivery. For postal mail submission, this must include the name of an office, official, individual or function (e.g., application receipt center) and a complete mailing address. For electronic submission, this must include the URL or email address; whether a password(s) is required; whether particular software or other electronic capabilities are required; what to do in the event of system problems and a point of contact who will be available in the event the applicant experiences technical difficulties.[1]

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

E. Application Review Information

1. *Criteria—Required.* This section must address the criteria that BPA will use to evaluate applications. This includes the merit and other review criteria that evaluators will use to judge applications, including any statutory, regulatory, or other preferences that will be applied in the review process. These criteria are distinct from eligibility criteria that are addressed before an application is accepted for review and any program policy or other factors that are applied

during the selection process, after the review process is completed. The intent is to make the application process transparent so applicants can make informed decisions when preparing their applications to maximize fairness of the process. The announcement should clearly describe all criteria, including any sub-criteria. If criteria vary in importance, the announcement should specify the relative percentages, weights, or other means used to distinguish among them. For statutory, regulatory, or other preferences, the announcement should provide a detailed explanation of those preferences with an explicit indication of their effect (e.g., whether they result in additional points being assigned).

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

2. *Review and Selection Process—Required.* This section may vary in the level of detail provided. The announcement must list any program policy or other factors or elements, other than merit criteria, that the selecting official may use in selecting applications for financial assistance award (e.g., geographical dispersion, program balance, or diversity). BPA may also include other appropriate details. For example, this section may indicate who is responsible for evaluation against the merit criteria (e.g., peers external to BPA or BPA personnel) and/or who makes the final selections for financial assistance awards. If there is a multi-phase review process (e.g., an external panel advising internal BPA personnel who make final recommendations to the deciding official), the announcement may describe the phases. It also may include: the number of people on an evaluation panel and how it operates, the way reviewers are selected, reviewer qualifications, and the way that conflicts of interest are avoided. With respect to electronic methods for providing information about funding opportunities or accepting applicants' submissions of information, BPA is responsible for compliance with Section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d).

3. [Reserved]

4. *Anticipated Announcement and Financial Assistance Award Dates—Optional.* This section is intended to provide applicants with information they can use for planning purposes. If there is a single application deadline followed by the simultaneous review of all applications, BPA can include in this section information about the anticipated dates for announcing or notifying successful and unsuccessful applicants and for having Financial assistance awards in place. If applications are received and evaluated on a “rolling” basis at different times during an extended period, it may be appropriate to give applicants an estimate of the time needed to process an application and notify the applicant of BPA's decision.

F. Financial assistance award Administration Information

1. *Financial Assistance Award Notices—Required*. This section must address what a successful applicant can expect to receive following selection. If BPA's practice is to provide a separate notice stating that an application has been selected before it actually makes the financial assistance award, this section would be the place to indicate that the letter is not an

authorization to begin performance (to the extent that it allows charging to financial assistance awards of pre-award costs at the recipient's own risk). This section should indicate that the notice of financial assistance award signed by the grants officer (or equivalent) is the authorizing document, and whether it is provided through postal mail or by electronic means and to whom. It also may address the timing, form, and content of notifications to unsuccessful applicants. See also 3.210 Information contained in a financial assistance award.

2. *Terms and Conditions—Required*. This section must identify the usual clauses and unique requirements that financial assistance awards may include. Providing this information lets a potential applicant identify any requirements with which it would have difficulty complying if its application is successful. In those cases, early notification about the requirements allows the potential applicant to decide not to apply or to take needed actions before receiving the financial assistance award. The announcement need not include all of the terms and conditions of the financial assistance award, but may refer to a document (with information about how to obtain it) or website where applicants can see the terms and conditions. The announcement should inform potential applicants about special requirements that could apply to particular financial assistance awards after the review of applications and other information, based on the particular circumstances of the effort to be supported (e.g., if some situations may justify special terms on intellectual property, data sharing or security requirements).

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

G. Agency Contact(s)—Required

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

   i. Points of contact who may be reached in multiple ways (e.g., by telephone, FAX, and/or email, as well as regular mail).

   ii. A fax or email address that multiple people access, so that someone will respond even if others are unexpectedly absent during critical periods.

   iii. Different contacts for distinct kinds of help (e.g., one for questions of programmatic content and a second for administrative questions).

H. Other Information—Optional

1. This section may include any additional information that will assist a potential applicant. For example, the section might:

   i. Indicate whether this is a new program or a one-time initiative.

   ii. Mention related programs or other upcoming or ongoing BPA funding opportunities for similar activities.

iii. Include current Internet addresses for BPA websites that may be useful to an applicant in understanding the program.

iv. Alert applicants to the need to identify proprietary information and inform them about the way BPA will handle it.

v. Include certain routine notices to applicants (e.g., that BPA is not obligated to make any financial assistance award as a result of the announcement or that only the Contracting Officer can bind BPA to the expenditure of funds).

Appendix II—Contract Provisions for Recipient Contracts Under Financial Assistance Awards

In addition to other provisions required by BPA or the recipient, all contracts made by the recipient under the financial assistance award must contain provisions covering the following, as applicable.

1. Contracts for more than $150,000 must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

2. All contracts in excess of $10,000 must address termination for cause and for convenience by the recipient including the manner by which it will be effected and the basis for settlement.

3. Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

4. Construction Wage Rate Requirements Statute, formerly known as the Davis-Bacon Act. When required by Federal program legislation, all prime construction contracts in excess of $2,000 awarded by recipients must include a provision for compliance with the Construction Wage rate Requirements Statute (40 U.S.C. § Chapter 31, Subchapter IV,) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor located at https://sam.gov/content/wage-determinations. In addition, contractors must be required to pay wages not less than once a week. The recipient must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The recipient must report all suspected or reported violations to BPA. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The recipient must report all suspected or reported violations to BPA.

5. Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the recipient in excess of $100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no

laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

6. Rights to Inventions Made Under a Contract or Agreement. If the financial assistance award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

7. Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of $150,000 must contain a provision that requires the non-Financial assistance award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to BPA and the Regional Office of the Environmental Protection Agency (EPA).

8. Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

9. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding $100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any financial assistance award. Such disclosures are forwarded from tier-to-tier up to the non-financial assistance award.

Appendix III—Reserved (Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Institutions of Higher Education (IHEs))

Appendix IV—Reserved (Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Nonprofit Organizations)

Appendix V—Reserved (State/Local Government and Indian Tribe-wide Central Service Cost Allocation Plans)

Appendix VI—Reserved (Public Assistance Cost Allocation Plans)

Appendix VII—Reserved (States and Local Government and Indian Tribe Indirect Cost Proposals)

Appendix VIII—Nonprofit Organizations Exempted From Part E—Cost Principles

1. Advance Technology Institute (ATI), Charleston, South Carolina
2. Aerospace Corporation, El Segundo, California
3. American Institutes of Research (AIR), Washington, DC
4. Argonne National Laboratory, Chicago, Illinois
5. Atomic Casualty Commission, Washington, DC
6. Battelle Memorial Institute, Headquartered in Columbus, Ohio
7. Brookhaven National Laboratory, Upton, New York
8. Charles Stark Draper Laboratory, Incorporated, Cambridge, Massachusetts
9. CNA Corporation (CNAC), Alexandria, Virginia
10. Environmental Institute of Michigan, Ann Arbor, Michigan
11. Georgia Institute of Technology/Georgia Tech Applied Research Corporation/Georgia Tech Research Institute, Atlanta, Georgia
12. Hanford Environmental Health Foundation, Richland, Washington
13. IIT Research Institute, Chicago, Illinois
14. Institute of Gas Technology, Chicago, Illinois
15. Institute for Defense Analysis, Alexandria, Virginia
16. LMI, McLean, Virginia
17. Mitre Corporation, Bedford, Massachusetts
18. Noblis, Inc., Falls Church, Virginia
19. National Radiological Astronomy Observatory, Green Bank, West Virginia
20. National Renewable Energy Laboratory, Golden, Colorado
21. Oak Ridge Associated Universities, Oak Ridge, Tennessee
22. Rand Corporation, Santa Monica, California
23. Research Triangle Institute, Research Triangle Park, North Carolina
24. Riverside Research Institute, New York, New York
25. South Carolina Research Authority (SCRA), Charleston, South Carolina
26. Southern Research Institute, Birmingham, Alabama
27. Southwest Research Institute, San Antonio, Texas

28. SRI International, Menlo Park, California
29. Syracuse Research Corporation, Syracuse, New York
30. Universities Research Association, Incorporated (National Acceleration Lab), Argonne, Illinois
31. Urban Institute, Washington DC
32. Non-profit insurance companies, such as Blue Cross and Blue Shield Organizations
33. Other non-profit organizations as negotiated with financial assistance awarding agencies

Appendix IX—Reserved (Hospital Cost Principles)

Appendix X—Data Collection Form (Form SF-SAC)

The Data Collection Form SF-SAC is available on the FAC website.

Appendix XI—Compliance Supplement

The compliance supplement is available on the OMB website:
(*https://www.whitehouse.gov/omb/information-resources/circulars/)*

Appendix XII—Reserved (Award Term and Condition for Recipient Integrity and Performance Matters)