

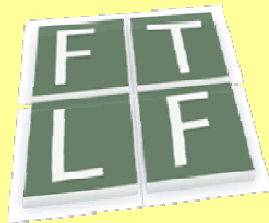
Federal Cooperative Agreements Compliance

Prepared for:

Federal Publications Seminars

Presented by:

Stacia Davis Le Blanc, Esquire



FEDERALGRANTSLAW.COM

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A hand is holding a 'FEDERAL CASH TRANSACTIONS REPORT' form. The form is divided into several sections. Section 2, 'RECIPIENT ORGANIZATION', includes fields for Name, Number and Street, City, State and ZIP Code, and Federal Employer Identification No. Section 3, 'FEDERAL EMPLOYER IDENTIFICATION NO.', is also visible. Section 4, 'BUDGET INFORMATION - No.', includes a table for 'BUDGET INFORMATION - No.' with columns for Grant Program Function or Activity (a), Catalog of Federal Domestic Assistance Number (b), Estimated Unobligated Funds Federal (c), and Non-Federal (d). Section 5, 'FINANCIAL STATUS REPORT (Long Form)', includes fields for Federal Agency and Organizational Element to Which Report is Submitted, Recipient Organization, Funding/Grant Period, and Recipient Account Number or Identifying Number. Section 6, 'TRANSACTIONS', includes a table for 'TRANSACTIONS' with columns for Total outlays, Refunds, rebates, etc., and Program income used in accordance with the deduction alternative. Section 7, 'REMARKS', includes a field for 'REMARKS'. The form is being held by a hand, and the background is a blurred image of a person.

Federal Grants Law

Sources of Requirements



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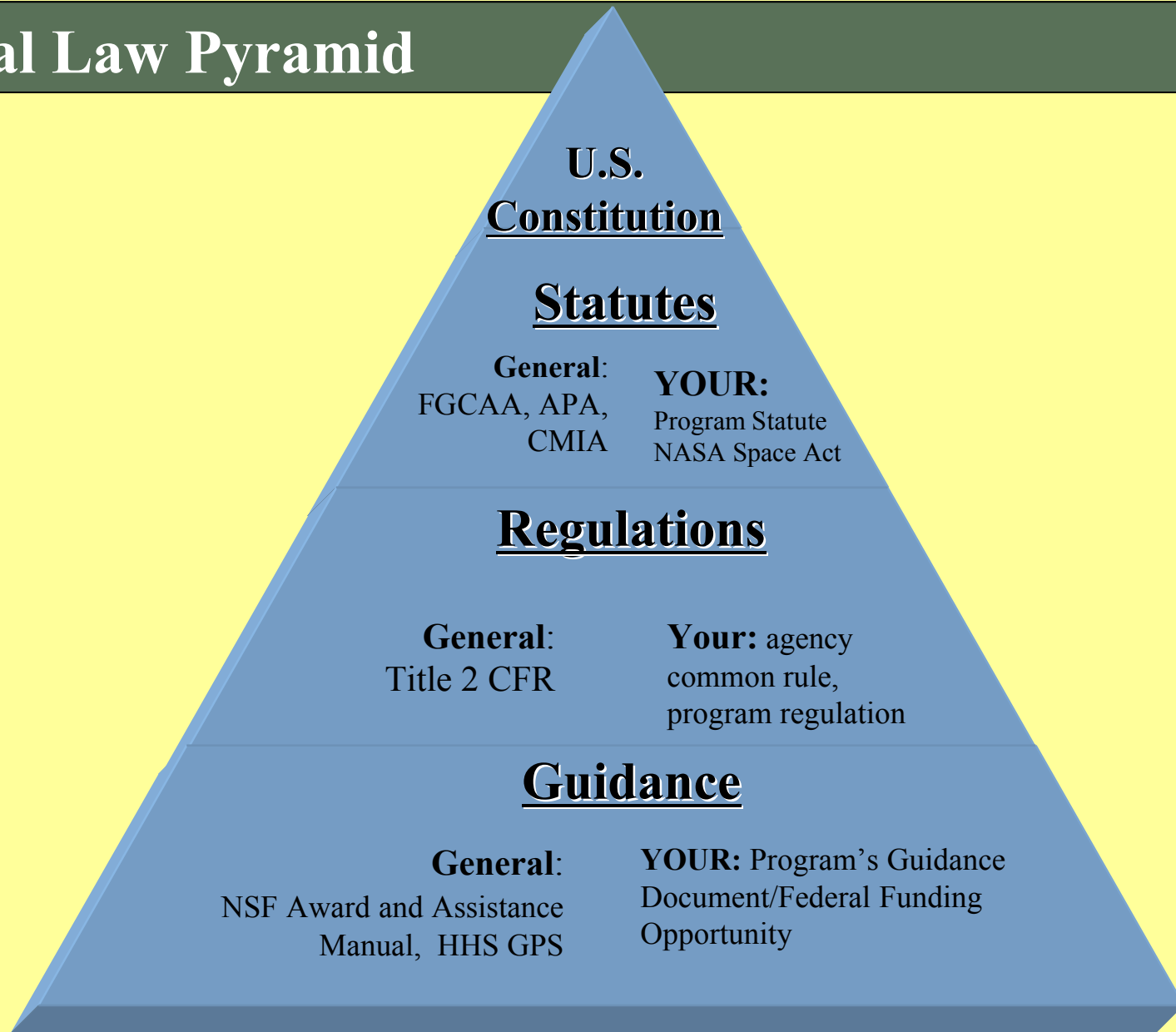
The Nature of Federal Appropriations

- Constitutional Power of the Purse
- Need Statutory Authority
- GAO Principles of Appropriations
 - Chapter 10 of the Redbook on Financial Assistance
 - Time, Purpose, Amount of Appropriation
 - <http://www.gao.gov/special.pubs/redbook1.html>
- Prohibited Expenditures for federal appropriations
- Funds subject to many, many, many conditions
- The Funds in the hands of recipient change color
 - Exceptions, however, almost consume the rule
 - Doesn't *really* change color in your hands

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Federal Law Pyramid



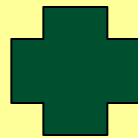
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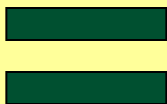
Federal Law: The Making of Public Policy



Authorizing Statute
(e.g., Head Start Act)



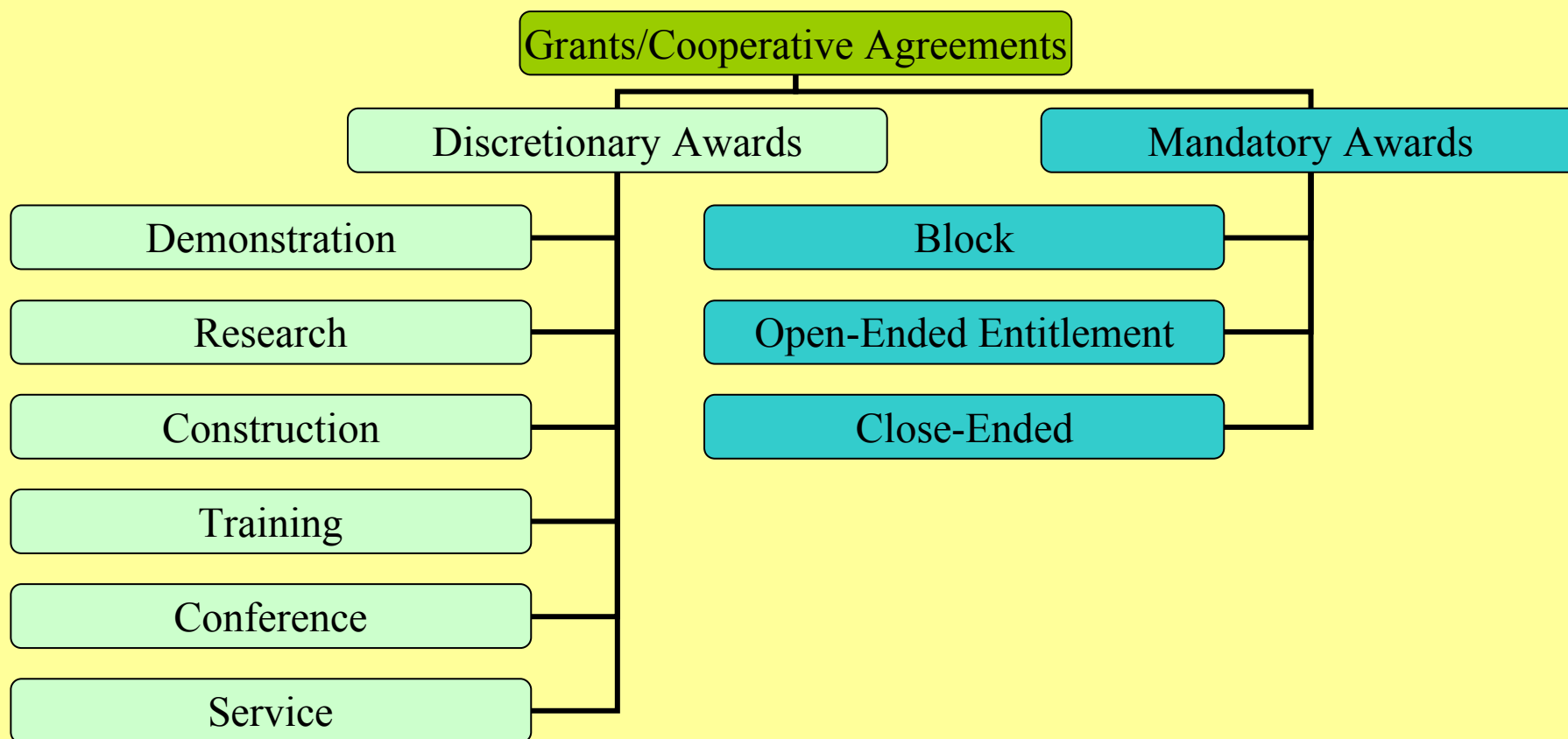
Appropriations Statute
(e.g., ARRA or FY 2010 Omnibus)



Federally Funded Program

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Types of Grants



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The Grant Competition Process

- Announcement of availability of funds initiates the competition (www.grants.gov)
- Announcement describes purposes of grant, eligibility requirements, criteria for ranking of applications, applicable program requirements and laws of general relevance, deadlines for submissions
- May provide date for Q&A meeting between prospective recipients and the funding agency

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The Grant Award Process

- Application review done either by agency itself or by independent review panel under agency's supervision
- Review typically consists of ensuring completeness (*i.e.*, all required materials are submitted), examination of certifications/assurances, scoring/ranking of applications according to substantive criteria listed in funding announcement
- Based on review results, agency will make its selection and announce the awardees

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The Grant Award

- After selection from proposals, federal agency provides recipient with an “award instrument” (the grant agreement) for execution
- Grant agreement contains (1) the award amount, (2) the grant/project period, (3) incorporation of other statutes and regulations, (4) listing of agency terms and conditions of the award, and (5) other specific limitations or authorizations applicable to the grant
- Agreement will incorporate the recipient’s proposal by reference
- Contractually Binding Recipient to Terms

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Source of Requirements

The Statutes

- Federal Grants and Cooperative Agreements Act of 1977
- Single Audit Act
- Cash Management Improvements Act
- Government Performance and Results Act
- Byrd Anti-Lobbying Amendment
- Federal Financial Assistance and Management Improvement Act
- Improper Payments Information Act
- Federal Civil False Claims Act
- Fraud Enforcement and Recovery Act of 2009
- Program Fraud Civil Remedies Act
- Hatch Act
- Federal Funding Accountability and Transparency Act

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Source of Requirements

Federal Grants and Cooperative Agreements Act

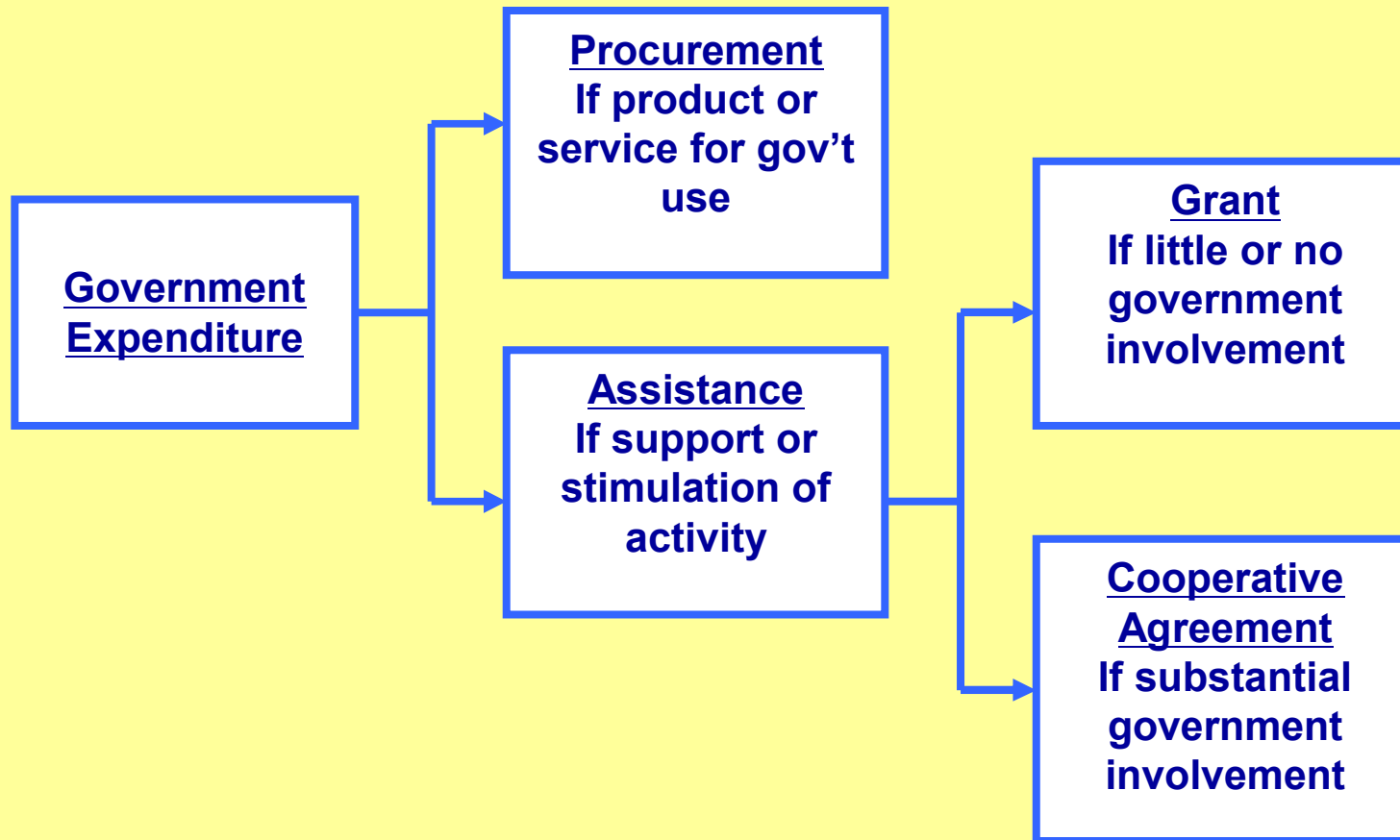
- Prescribes criteria for executive agencies for selecting procurement contracts, grants, and cooperative agreements to achieve uniformity in their use; a clear definition of the relationships they reflect; and a better understanding of the responsibilities of the parties to them.
- Establishes government-wide criteria for determining the appropriate legal instrument for funding an extramural activity – i.e. competition standards!
- **NOT** financial assistance authority – need separate statutory authority to provide assistance
- Be sure you understand what type of agreement you have
 - 31 U.S.C. 6301 et. seq.

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Grants and Cooperative Agreements Act of 1977

(31 U.S.C. Sec. 6301-6308)



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Source of Requirements

■ **Single Audit Act**

- Establishes uniform audit requirements for state, local, and Indian tribal governments. A single or program-specific audit is required of non-federal entities spending \$500,000 or more in a year in federal awards.
 - 31 U.S.C. Chapter 75

■ **Government Performance and Results Act**

- Requires government agencies to set program goals, evaluate performance based on those goals, and report on the results of that evaluation to congress. The results are part of the budgetary decision-making process.
 - Pub. L. 103-62

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Source of Requirements

- **Federal Financial Assistance and Management Improvement Act**

- The purpose of this Act is to improve the effectiveness and performance of federal grant programs by simplifying the federal grant process and making it more uniform.

- Pub. L. 106-107

- **Improper Payments Information Act**

- Requires federal agencies to annually review all programs and activities they administer and identify those which may be susceptible to “significant improper payments,” report to congress estimates of improper payments, and develop plans to reduce future improper payments.

- Pub. L. 107-300

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Source of Requirements

- **Federal Civil False Claims Act**

- Prohibits false claims or statements to federal programs. Falsity defined as actual knowledge of false information, deliberate ignorance, or reckless disregard for truth or falsity. Provides for “damages” equal to three times the false claims and penalties for each false claim of up to \$10,000. Primary enforcement tool for fraudulent claims or statements to federal programs.

- 31 U.S.C. § § 3729 - 3733

- Amended by **Fraud Enforcement and Recovery Act** of 2009 – “false statement “material” to government decision to pay a false claim
 - Retroactive to June 7, 2008

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Source of Requirements

■ **Program Fraud Civil Remedies Act**

- Known as “mini-false claims act,” limited to total claims of \$150,000. Penalties of double damages, plus penalties for each false claim. Enforced administratively by Agency counsel instead of DOJ.

■ 31 U.S.C. § § 3801 - 3812

■ **Hatch Act**

- So called “Little Hatch Act” imposes restrictions on partisan campaigning by state and local employees who work in offices which receive federal grant support.

■ 31 U.S.C. § § 1501 - 1508

■ **Byrd Amendment – Lobbying Disclosure Act**

- Certify that you did not lobby for the grant with “covered officials”
- Report expenditures over \$100,000

■ 31 U.S.C. § 1352

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Source of Requirements

- **Cash Management Improvement Act**
 - Can only draw funds for immediate needs
 - Interest earned by federal government
 - States refund interest earned on federal funds
 - 31 CFR Part 205
- **Federal Funding Accountability and Transparency Act (FFATA)**
 - Amended the Federal Financial Assistance Management Improvement Act of 1999 to require data with respect to federal financial assistance to be available for public access in a searchable and user-friendly form.
 - Award information is to be made available and searchable by recipient and subrecipient name and include the amount of awards going back 10 years (beginning in 2006).
 - Pub. L. 109-282

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Important Points

- All financial assistance awards must be based on federal agency statutory citation to provide assistance for authorized purpose
- Be sure you know your statutory language
- Keep a copy with your grant file



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Source of Requirements

The Regulations

- Title 2 CFR
 - OMB Circulars for administrative requirements and cost principles are published here, but adopted by agencies in their own Title of the CFR
 - Agency implementation of grant/cooperative agreement requirements **will be relocated** from their Title of CFR to 2 CFR
- Program Specific
 - Agency implements cooperative agreement program statute by promulgating regulations within its own Title of the CFR

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The OMB Circulars

- Grant/Cooperative Agreements Administration
 - A-110 → 2 C.F.R. Part 215: Uniform Administrative Requirements for Grant and Other Agreements with Institutions of Higher education, Hospitals and Non-Profit Organizations
 - A-102 : Grants and Cooperative Agreements with State and Local Governments - See Agency Common Rule
- Cost Principles
 - A-21 → 2 C.F.R. Part 220: Educational Institutions
 - A-122 → 2 C.F.R. Part 230: Non-Profit Organizations
 - A-87 → 2 C.F.R. Part 225: State, Local, and Indian Tribal Governments
 - 48 C.F.R. Part 31: For-Profit Organizations

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Source of Requirements

■ OMB Circulars: Continued

■ Audit Requirements

- A-133: Audits of States, Local Governments, and Non-Profit Organizations
 - Implements the Single Audit Act of 1984
 - Single Audits are required for all programs which receive \$500,000 or more in Federal support
 - Compliance Supplement
- Grant/Cooperative Agreement Project Audits
 - OIG / Contract Auditor / Compliance Office within Agency

■ A-50: Audit Follow-Up

- Inspector General project specific audits questions costs and makes adverse findings
- Audit Action Official makes management decision/audit resolution
- Most agencies give IG “concurrence” authority for resolution unless taken to higher level management official in agency

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Department	Grants Management Common Rule (State & Local Governments)	OMB Circular A-110 (universities & non-profit organizations)	Nonprocurement Suspension & Debarment	Drug-Free Workplace Act common rule	Byrd Anti-Lobbying Amendment common rule
Agriculture	7 CFR 3016	7 CFR 3019	7 CFR 3017	7 CFR 3021	7 CFR 3018
Commerce	15 CFR 24	15 CFR 14	2 CFR 1326	15 CFR 29	15 CFR 28
Defense	32 CFR 33	32 CFR 32	2 CFR 1125	32 CFR 26	32 CFR 28
Education	34 CFR 80	34 CFR 74	34 CFR 85	34 CFR 84	34 CFR 82
Energy	10 CFR 600	10 CFR 600	2 CFR 901	10 CFR 607	10 CFR 601
Health & Human Services	45 CFR 92	45 CFR 74	2 CFR 376	45 CFR 82	45 CFR 93
Housing & Urban Development	24 CFR 85	24 CFR 84	24 CFR 24	24 CFR 21	24 CFR 87
Interior	43 CFR 12	43 CFR 12	2 CFR 1400	43 CFR 43	43 CFR 18
Justice	28 CFR 66	28 CFR 70	2 CFR 2867	28 CFR 83	28 CFR 69
Labor	29 CFR 97	29 CFR 95	29 CFR 98	29 CFR 94	29 CFR 93
State	22 CFR 135	22 CFR 145	2 CFR 601	22 CFR 133	22 CFR 138
Transportation	49 CFR 18	49 CFR 19	49 CFR 29	49 CFR 32	49 CFR 20
Treasury	--	--	31 CFR 19	31 CFR 20	31 CFR 21
Veterans Affairs	38 CFR 43	38 CFR 43	2 CFR 801	38 CFR 48	38 CFR 45

Source of Requirements

Policies and Guidance

- Requirements affecting your rights and responsibilities should be published as a rule in accordance with APA
- OMB Published Good Guidance Documents by Agencies
- NSF Award and Administration Manual
- Program Guidance

Terms and Conditions

- **Agency–Wide**
- **Program–Wide**
- **Special Award Conditions**
- **High Risk**

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People You Need to Know: The Grants Team



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The Grants Team

- **Grants Officer**
- **Program Officer**
- **Recipient**
- **Subrecipient**
- **Contractor/ Vendor**
- **Third party Contributor**

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The Grants Team

■ Grants and Agreements Officer

- authority to legally bind the government, approve/disapprove
- designated to serve as the agency official responsible for the business management aspects of a particular grant(s) or cooperative agreement(s)
- serves as the counterpart to the business officer of the recipient organization.
- responsible for all business management matters associated with the review, negotiation, award, and administration of grants and interprets grants administration policies and provisions.
- works closely with the program or project officer who is responsible for the scientific, technical, and programmatic aspects of the grant.

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The Grants Team

■ **Program Officer**

- **No legal authority to bind the government**
- **Makes no financial determinations**
- **The individual designated as the official responsible for the programmatic, scientific, and/or technical aspects of agency programs.**
- **He/she serves as the counterpart to the agency's Grants Officer**
- **Makes recommendations on continued federal support**
- **Reviews progress reports**
- **Interprets program requirements**

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The Grants Team

■ Recipient

- recipient operations subject to federal legal and regulatory requirements only:
- As specified in the terms and conditions of the award, including recipient's plans, proposals and assurances
 - Must be explicit
 - No implied terms
 - No retroactive application
 - No Unconstitutional Provisions
- To the extent that they would be if no Federal funds were involved
- **BUT:** Do not benefit from legal protections of feds either

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The Grants Team

Recipient must:

- **Maintain written standards of conduct governing the performance of their employees who award and administer contracts**
- **Conduct procurements that allow for “open and free competition” to the maximum extent possible**
- **Establish written procurement procedures**
- **Perform a cost and price analysis and document it**
- **Procedures for determining allowability, allocability, and reasonableness**
- **Burden of Proof is always on Recipient to support costs incurred and procedures for proper internal controls**

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The Grants Team

■ Subrecipient

- A non-Federal entity that receives a financial assistance subaward of Federal funds
- Does not include a beneficiary of such a program
- Flow Down of all terms and conditions, regulations, requirements
- Disallowance of sub's costs is held against prime recipient
 - Privity of contract is with recipient and government

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The Grants Team

- **Contractor/ Vendor**
 - “A dealer, distributor, merchant or other seller providing goods or services that are required for the conduct of a Federal program. These goods or services may be for an organization's own use or for the use of beneficiaries of the Federal program.” (OMB Circ. A-133 __.105)

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The Grants Team

■ Third Party Contributor

- Provides goods or services to recipient at no charge to recipient
- Must document costs as required by 2 CFR 215.23
- Valuation of personal services, equipment, property
- Use documentation similar to that required of the recipient

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Review – Know Your Terms!

- Prime Recipient
 - Receives funds from federal agencies
- Subrecipient
 - Carrying on underlying mission of federal government
- Vendor
 - Entity from which a prime or sub recipient may purchase goods/services; not tied to carrying out underlying federal mission, not tied to grant
- Third Party Contributor



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Financial Management Standards



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Financial Management Standards

- “(b) Recipients’ financial management systems shall provide for the following:
 - (1) Accurate, current and complete disclosure of the financial results of each federally-sponsored project or program in accordance with the reporting requirements set forth in § 1260.152. If NASA requires reporting on an accrual basis from a recipient that maintains its records on other than an accrual basis, the recipient shall not be required to establish an accrual accounting system. These recipients may develop such accrual data for its reports on the basis of an analysis of the documentation on hand.”
 - Language quoted from NASA: 14 CFR § 1260.121
 - See also 14 CFR § 1260.26
 - For NSF: Grant General Conditions (GC-1) Article 1
 - See also for NSF: Award & Administration Guide, Chapter III.

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Continued on Next Slide



Financial Management Standards

- “(2) Records that identify adequately the source and application of funds for federally-sponsored activities. These records shall contain information pertaining to Federal awards, authorizations, obligations, unobligated balances, assets, outlays, income and interest.
- “(3) Effective control over and accountability for all funds, property and other assets. Recipients shall adequately safeguard all such assets and assure they are used solely for authorized purposes.
- “(4) Comparison of outlays with budget amounts for each award. Whenever appropriate, financial information should be related to performance and unit cost data.”

■ Cont'd.

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Financial Management Standards

- “(5) Written procedures to minimize the time elapsing between the transfer of funds to the recipient from the U.S. Treasury and the issuance or redemption of checks, warrants or payments by other means for program purposes by the recipient. To the extent that the provisions of the [CMIA] govern, payment methods of State agencies, instrumentalities, and fiscal agents shall be consistent with CMIA Treasury-State Agreements or the CMIA default procedures codified at 31 CFR Part 205, ‘Withdrawal of Cash from the Treasury for Advances under Federal Grant and Other Programs.’”

■ Cont’d.

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NASA Specific Financial Management Standards

- “(6) Written procedures for determining the reasonableness, allocability and allowability of costs in accordance with the provisions of the applicable Federal cost principles and the terms and conditions of the award.
- “(7) Accounting records including cost accounting records that are supported by source documentation.”

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Financial Management Standards

- **Written Procedures** for Determining Reasonableness, Allocability and Allowability
- Internal control system, policies and procedures
- Track each grant separately - Allocability
 - Track expenditures according to Budget line items
 - Monitor monthly and be aware of deviations from budget

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Financial Management Standards

- Reconciling expenditures against budgeted line items
- Federally established **indirect cost rate**
- Recipient's accounting policies and procedures
- Separate set of ledger accounts exclusively to record grant expenditures
- Separate costs allocable to individual grant awards

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Financial Management Standards

- Systems to document revenues, and accounts receivables and payables
- Written procedures to minimize time elapsed between draw down and use of grant funds
- Generate monthly, quarterly and annual reports
- Compare to federally approved budget
- Be cognizant of prior approval requirements for significant budget changes

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Payments Under Cooperative Agreements

- **Cash Management Improvement Act of 1990 (CMIA)**
 - To ensure greater efficiency, effectiveness, and equity in the exchange of funds between the Federal Government and the States.
 - Interest accruing on funds held by the State after transfer from the Treasury and before disbursement shall be paid back to the Federal Treasury as miscellaneous receipts
 - 31 CFR Part 205

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Financial Management Standards

- **Documentation**

- Document, document, document
- Written agreements

- **Requirements Flow Down to Subrecipient**

- Recipients shall apply the provisions to subrecipients performing substantive work under grants and agreements that are passed through or awarded by the primary recipient
- Including applicable cost principles and administrative regulation

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Performance and Financial Reports

- Standardized Forms will replace multiple agency or program-specific forms used for similar purposes.
- Each form is being sponsored by a Federal agency which is listed below next to the form name.
 - **Federal Financial Report (SF425)**
 - **Research Performance Progress Report**
 - **Summary Report of Inventions - iEdison**

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Performance and Financial Reports



- **SF 269, 270, 271**

- **Request for advance or reimbursement**
 - Form 270 for general grants
 - Form 271 for Construction grants
- **Requires recipient submit:**
 - Outlays
 - Program income
 - Federal share
 - Non-federal share
 - Payments previously requested



- **NEW SF 245 Federal Financial Report!!!!**

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Financial Management Standards

- Norwalk Economic Opportunity Now, Inc., DAB No. 2002 (2005)
 - ACF terminated NEON's grant, alleging a deficiency in the Governing Body's Fiscal Management.
 - DAB allowed NEON to appeal, stating:
 - "NEON's Board, as the minutes show, was actively involved in overseeing the actions of management and ensuring that fiscal controls were in place. A new audit committee was formed during the corrective action period and started work; finance policies and procedures were approved, and so on."
 - NEON had sufficient documentation to show sufficient internal controls

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Financial Management Standards

- Juniata County Child Care and Development Services, Inc., DAB No. 2089 (2007)
 - Even if the DAB accepted as true Juniata's assertions regarding destruction of documents and vendors' inability to duplicate or replicate documents...
 - It would not provide a basis for reversing the disallowance because the responsibility for maintaining adequate records rested with Juniata, as the recipient of federal grant funds.
 - “[T]he documentation was ‘inadequate to establish the allocability and allowability of these expenditures in accordance with the governing cost principles contained in 2 CFR Part 230 (Cost Principles for Non-Profit Organizations (OMB Circular A-122)).’”

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Financial Management Standards

- Arlington Community Action Program, Inc., DAB No. 2141 (2008)
 - ACF disallowed funds on the grounds that ACAP either spent them on costs that are not allowable charges to federal Head Start funds under the applicable cost principles or failed to provide adequate documentation demonstrating that they were allowable charges.
 - A recipient is required to document its costs, and bears the burden of demonstrating the allowability and allocability of costs for which it received federal funding. Council of the Southern Mountains, DAB 1861 (2000).
 - The [DAB] has thus held that expenditures incurred outside their grant periods necessarily are not allocable to the grants and are subject to the disallowance. River East Economic Revitalization Corp., DAB 2087 (2007), citing Delta Foundation, Inc., DAB 1710 (1999).

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Payments



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Payments

- “(b)(1) Recipients are to be paid in advance, provided they maintain or demonstrate the willingness to maintain:
 - (i) Written procedures that minimize the time elapsing between the transfer of funds and disbursement by the recipient; and
 - (ii) Financial management systems that meet the standards for fund control and accountability as established in § 1260.121.”

- NASA: 14 CFR § 1260.122
- See *also* NSF’s Grant General Conditions (GC-1) Article 1
 - Continued on Next Slide

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Payments

- “(2) Cash advances to a recipient organization shall be limited to the minimum amounts needed and be timed to be in accordance with the actual, immediate cash requirements of the recipient organization in carrying out the purpose of the approved program or project. The timing and amount of cash advances shall be as close as is administratively feasible to the actual disbursements by the recipient organization for direct program or project costs and the proportionate share of any allowable indirect costs.”

■ Cont'd.

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Payments

- (c) Whenever possible, advances shall be consolidated to cover anticipated cash needs for all awards made by NASA to the recipient.
 - (1) Advance payments will be made by electronic funds transfer.
 - (2) Advance payment mechanisms are subject to 31 CFR Part 205.

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Payments

- “(e) Reimbursement is the preferred method when the requirements in paragraph (b) of this section cannot be met. NASA may also use this method on any construction agreement, or if the major portion of the construction project is accomplished through private market financing or Federal loans, and the Federal assistance constitutes a minor portion of the project. When the reimbursement method is used, NASA shall make payment within 30 days after receipt of the billing, unless the billing is improper.”

■ Cont’d.

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Payments

- “(f) If a recipient cannot meet the criteria for advance payments and NASA has determined that reimbursement is not feasible because the recipient lacks sufficient working capital, NASA may provide cash on a working capital advance basis. Under this procedure, NASA shall advance cash to the recipient to cover its estimated disbursement needs for an initial period generally geared to the awardee's disbursing cycle. Thereafter, NASA shall reimburse the recipient for its actual cash disbursements. The working capital advance method of payment shall not be used for recipients unwilling or unable to provide timely advances to their subcontractor to meet the subcontractor's actual cash disbursements.”

■ Cont'd.

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Payments

- “(g) To the extent available, recipients shall disburse funds available from repayments to an interest earned on a revolving fund, program income, rebates, refunds, contract settlements, audit recoveries and interest earned on such funds before requesting additional cash payments.”

■ Cont'd.

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Payments

- “(h) Unless otherwise required by statute, NASA will not withhold payments for proper charges made by recipients at any time during the project period unless the conditions in paragraphs (h)(1) or (2) of this section apply.
 - (1) A recipient has failed to comply with the project objectives, the terms and conditions of the award, or NASA reporting requirements.
 - (2) The recipient is delinquent in a debt to the United States as defined in OMB Circular A-129, "Managing Federal Credit Programs." Under such conditions, NASA may, upon reasonable notice, inform the recipient that payments shall not be made for obligations incurred after a specified date until the conditions are corrected or the indebtedness to the Federal Government is liquidated.”

...

■ Cont'd.

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Payments

- “(k) Recipients shall maintain advances of Federal funds in interest bearing accounts, unless the conditions in paragraphs (k)(1), (2), or (3) of this section apply.
 - (1) The recipient receives less than \$120,000 in Federal awards per year.
 - (2) The best reasonably available interest bearing account would not be expected to earn interest in excess of \$250 per year on Federal cash balances.
 - (3) 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.”

■ Cont'd.

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Payments

- “(I) Interest earned on Federal advances deposited in interest-bearing accounts in excess of \$250 per year shall be remitted annually to Department of Health and Human Services (DHHS), Payment Management System, Rockville, MD 20852. Interest amounts up to \$250 per year may be retained by the recipient for administrative expense. In accordance with 31 CFR Part 206, interest should be remitted electronically through the Automated Clearing House (ACT) to DHHS. Recipients without this capability may make the remittance by check. In either case, the remittance should be payable to DHHS and should indicate the recipient’s Entity Identification Number (EIN) and reason, i.e., ‘Interest earned.’”
- Cont’d.

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Payments

- “(m) Except as noted elsewhere in this subpart, only the following forms shall be authorized for the recipients in requesting advances and reimbursements. Federal agencies shall not require more than an original and two copies of these forms.
 - (1) SF-270, Request for Advance or Reimbursement. [Reserved. Not used by NASA.]
 - (2) SF-271, Outlay Report and Request for Reimbursement for Construction Programs. The SF-271 may be used for requesting reimbursement for NASA construction programs.”

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Advance Payments

- **Advance Payments and Interest Earned**
 - Advance payments should be timed to minimize the amount of time the recipient accumulates interest on the Federal funds
 - Any interest accumulated must be returned to the Treasury as miscellaneous receipts

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Advance Payments

- “Advance payments through a Letter of Credit will be made by the Financial Management Office of the NASA Center assigned financial cognizance of the grant, using the [DHHS/PMS], in accordance with procedures provided to the Recipient.
- “The Recipient shall submit a Federal Cash Transactions Report (SF 272), and, when applicable, a Continuation Sheet (SF 272A) electronically to DHHS/PMS within 15 working days following the end of each Federal Fiscal quarter.
- ”One Federal Cash Transactions report shall be submitted for all grants financed under a letter of credit arrangement with each NASA Center.”
 - See 14 CFR § 1260.26(a)
 - *For NSF: Grant General Conditions (GC-1) Article 13.*

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Keeping it All In the Air: Federal Cost Principles



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Overview

- In order to be properly charged to a Federal award, costs must be:
 - Reasonable
 - Allocable
 - Allowable
- Cost principles become binding via incorporation into the agencies' codifications of OMB Circulars A-110 and A102 the Common Rules
- You are governed by the rules that apply to your type of organization

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Federal Cost Principles

- **Allowability:** to be allowable, costs must meet the criteria of “reasonable” set forth in OMB Circular A-122
 - “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 costs”
 - Conform to the limitations and exclusions regarding particular cost items
 - Be adequately documented
 - Be treated consistent under generally accepted accounting principles (GAAP) and the recipient’s policies and procedures
 - See 2 CFR Part 230, App. A(A)(2-3)

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Federal Cost Principles

- Allowability of costs is determined by applicable cost principles:
 - OMB Circular A-122 (2 CFR 230) – nonprofit organizations
 - OMB Circular A-87 (2 CFR 225)– state and local governments
 - OMB Circular A-21 (2 CFR 220) – educational institutions
 - 48 C.F.R. 31 – for-profit organizations

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Federal Cost Principles

- **Reasonableness:** Where the costs incurred appear reasonable and reflect the actions a prudent person would take under like circumstances when the decision was made to incur the costs. Take particular care if organization receives the preponderance of their support from awards made by Federal agencies. In determining the reasonableness of a given cost, consideration shall be given to:
- Whether the cost is of a type generally recognized as ordinary and necessary for the operation of the organization or the performance of the award....

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Federal Cost Principles

- ...The restraints or requirements imposed by such factors as generally accepted sound business practices, arms length bargaining, Federal and State laws and regulations, and terms and conditions of the award.
- Whether the individuals concerned acted with prudence in the circumstances, considering their responsibilities to the organization, its members, employees, and clients, the public at large, and the Federal Government.
- Significant deviations from the established practices of the organization which may unjustifiably increase the award costs.

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Federal Cost Principles

■ Allocability:

- Costs are allocable to a Federal grant if they –
 - Are allocated to a grant/project based on the relative benefits received by that project
 - Are treated consistent to similar costs incurred by the recipient
 - Are incurred specifically for an award
 - Benefit the grant and can be distributed proportionately
 - Are necessary to the overall operation even if there is no direct relationship to a particular cost objective

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Allowable Costs

- Total project costs = allowable direct costs incident to grant activities plus the allocable portion of indirect costs, less any applicable credits
- Direct costs
 - Costs identified specifically with a particular final cost objective
- Indirect costs
 - Costs incurred for common or joint objectives and that cannot be readily identified with a particular cost objective (e.g., facilities, administration)
 - May be directly allocated to award; or
 - Pooled—seek Federally-negotiated indirect cost rate

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Note About Allowable Costs - NSF

- Certain prior approval requirements contained in the Federal cost principles have been modified by Article 2 of the NSF Grant General Conditions (GC-1).
- Also see Chapter V of NSF's Proposal and Award Policies and Procedures Guide – Part II: Award and Administration Guidelines.

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Indirect Costs

- Indirect costs are those that have been incurred for common or joint objectives and cannot be readily identified with a particular final cost objective.
- After direct costs have been determined and assigned directly to awards or other work as appropriate, indirect costs are those remaining to be allocated to benefiting cost objectives.
- A cost may not be allocated to an award as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been assigned to an award as a direct cost.

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Indirect Costs

- Typical examples of indirect cost for many non-profit organizations may include:
 - depreciation or use allowances 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.

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Indirect Cost Rate

- “Indirect cost proposal” means the documentation prepared by an organization to substantiate its claim for the reimbursement of indirect costs. This proposal provides the basis for the review and negotiation leading to the establishment of an organization's indirect cost rate.
- To find information about indirect cost rate proposals, go to:
 - NSF: <http://bit.ly/cveWeM>

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Cognizant Agency

- The cognizant agency (“CA”) reviews and approves recipients’ indirect cost rates.
- Approved rates must be accepted by other agencies, unless specific program regulations restrict the recovery of indirect costs.
- Agency that provides the most funding is CA
- To search for your CA, go to:
<http://harvester.census.gov/sac/dissem/asp/Reports.asp>
 - HHS is the cognizant agency for all States, most cities, and for hospitals.
 - The Department of the Interior is the cognizant agency for all Indian tribal governments.

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Applicable Accounting Standards

- Generally accepted accounting principles (aka “GAAP” or “the Yellowbook”)
 - Uniform minimum standards of and guidelines to financial accounting and reporting.
 - GAAP establishes appropriate measurement and classification criteria for financial reporting.
 - Adherence to GAAP provides a reasonable degree of comparability among the financial reports of state and local governmental units.
 - See <http://www.gao.gov/govaud/ybk01.htm>

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Applicable Accounting Standards

- The Federal Accounting Standards Advisory Board (“FASAB”) is the body that establishes and identifies the hierarchy of the GAAP for federal reporting entities.
- The GAAP hierarchy consists of the sources of accounting principles used in the preparation of financial statements of federal reporting entities that are presented in conformity with GAAP and the framework for selecting those principles.
 - See <http://www.fasab.gov/accepted.html>

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Selected Items of Cost



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Advertising and Public Relations

- The only allowable public relations costs are:
 - (1) Costs specifically required by the Federal award;
 - (2) Costs of communicating with the public and press pertaining to specific activities or accomplishments which result from performance of Federal awards are considered necessary as part of the outreach effort for the Federal 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 keep the public informed on matters of public concern, such as notices of Federal contract/grant awards, financial matters, etc.

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Advertising and Public Relations

- Unallowable advertising and public relations costs include the following:
 - (1) All advertising and public relations costs other than as specified in subparagraphs c, d, and e;
 - (2) Costs of meetings, conventions, convocations, or other events related to other activities of the non-profit organization, including:
 - (a) Costs of displays, demonstrations, and exhibits;
 - (b) Costs of meeting rooms, hospitality suites, and other special facilities used in conjunction with shows and other special events; and
 - (c) 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; t-shirts, caps, memorabilia
 - (4) Costs of advertising and public relations designed solely to promote the non-profit organization.

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Advertising and Public Relations

- Which one of these is not like the others?
 - Employee's time to draft press release announcing number of new food stamp enrollees
 - Employee's time distributing magnets with your organization's logo and contact information
 - Employee's time conducting community outreach on the availability of job training programs sponsored by XYZ grant
 - Costs of assembling presentation to demonstrate successful strategies for finding and enrolling eligible individuals in the food stamp program, to be presented at regional conference for tribal organizations

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Advertising and Public Relations Example

- recipient organization received an HHS grant. In order to publicize its organization for the purposes of recruitment, the recipient secured the services of a PR agency that created a vague PR plan at a cost of approximately \$8,000. However, no part of the plan was implemented.
 - UNALLOWABLE. While some PR costs are allowable, in this case a vague plan was created but never implemented to create the types of outreach allowed under the agency regulations. Thus, no allowable PR costs were incurred.
 - *Marie Detty Youth and Family Services Center*, DAB 1643 (1998)

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Entertainment v. Employee Morale

- **Entertainment = Unallowable:** “Costs of **entertainment**, including **amusement, diversion, and social activities** and any costs directly associated with such costs (such as tickets to shows or sports events, meals, lodging, rentals, transportation, and gratuities) are **unallowable**.”
- **Employee Morale = Allowable:** “The costs of **health or first-aid clinics and/or infirmaries, recreational facilities, employee counseling services, employee information publications**, and any **related expenses incurred in accordance with a governmental unit's policy** are **allowable**. Income generated from any of these activities will be offset against expenses.

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Entertainment Guidance from NSF

- “Costs of entertainment, amusement, diversion and social activities and any costs directly associated with such costs (such as tickets to shows or sporting events, meals, lodging, rentals, transportation and gratuities) are unallowable.”

- NSF AAG, Chapter C.V.5.i

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Entertainment Example

- recipient used grant funds to pay for an “employee recognition” luncheon. The recipient spent approximately \$1500 for the lunch, which it justified as necessary for “employee morale.” Is this cost allowable?
 - UNALLOWABLE. Food costs are generally subject to strict scrutiny because they fall so close to entertainment. Further, this is not an allowable “employee morale” cost. Employee morale costs relate more closely to health and physical well-being.
 - *Ohio Dept. of Family and Job Services*, DAB 1961 (2005)

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Meetings and Conferences

- “Any costs charged to an NSF grant also need to be reasonable and directly allocable to the supported activity.
- “Meeting and conference costs...are only allowable if such costs are specifically and clearly identified in the proposed scope of work and budget, as modified and approved by NSF.
- “NSF funds are not otherwise to be spend for meals or coffee breaks for intramural meetings of an organization or any of its components, including, but not limited to, laboratories, departments and centers.”
 - See NSF AAG, Chapter C.V.5.

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Meetings and Conferences

- **Conference Facilities**
 - Rental of facilities and necessary equipment is allowable. (See AAG Chapter V.C.3.)
- **Supplies**
 - Purchase of expendable materials and supplies necessary for the meeting is allowable.
- **Conference Services**
 - Costs of translation services and of recording and transcribing the proceedings are allowable.
- **Publication Costs**
 - Costs of publishing the proceedings are allowable if approved in the grant.
- **Consultant Services and Speaker Fees**
 - Reasonable fees and travel allowances and per diem (or meals provided in lieu of per diem) are allowable as prescribed in AAG Chapter V.B.4 and AAG Chapter V.B. 6.

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Meetings and Conferences

- **Meals and Coffee Breaks**
 - When certain meals are an integral and necessary part of a conference (e.g., working meals where business is transacted), grant funds may be used for such meals.
 - Grant funds may also be used for furnishing a reasonable amount of hot beverages or soft drinks to conference participants and attendees during periodic coffee breaks.
- **Participant Support Costs**
 - Participant support costs are allowable as prescribed in AAG Chapter V.B.8.
- **Alcoholic Beverages**
 - No Federal funds may be spent on alcoholic beverages.

- See NSF AAG Chapter V.C.5

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Meetings and Conferences Example

- The Agency excluded from the indirect cost pool \$5,299 spent for certain food and drinks by Humanics on the basis that the expenses were neither necessary nor reasonable, and that they were "entertainment costs."
- Humanics argued that the meal costs here were unique because they were incurred by Humanics' employees while on business trips, which had been found generally allowable by the Agency.
- The DAB stated that Humanics did not present any evidence that the food and drink expenses were necessary for business purposes, and some of the larger individual cost items on their face indicated the unnecessary nature of the costs: for example, \$331.21 for "Howard Johnson's--Wedding Party;" \$200.00 for "Peachtree Rd. Liquor Store;" \$752.50 for "Walt Disney World, Orlando, Florida."

UNALLOWABLE.

The burden is on the recipient to document and justify all costs.

- Humanics Associates, DAB No. 860 (1987)

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Travel

- Cost Principles
 - A-21: 2 CFR Part 220, App. A, ¶ 53
 - A-122: 2 CFR Part 230, App. B, ¶ 51
 - A-87: 2 CFR Part 225, App. B, ¶ 43
- Prior approval required for foreign travel
- Necessary and reasonable to carry out grant project
- Fly America Act Compliance

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Travel

- Travel costs, including costs of lodging, other subsistence, and incidental expenses are reasonable and allowable only to the extent such costs do not exceed charges normally allowed by the governmental unit in its regular operations as a result of the governmental unit's policy."
- Costs of travel via governmental unit-owned, -leased, or -chartered aircraft are unallowable to the extent they exceed cost of commercial travel.
 - *See the cost principles appropriate to your org!*

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Travel

- Fly America Act 40 U.S.C. App. 1517
 - Must use U.S. flag air carrier when air travel is financed by federal appropriations, even if it is more expensive
 - For U.S. carrier to be “unavailable”, the time between connecting flights must be greater than four hours”
- Airfare costs in excess of the customary standard (coach or equivalent) airfare, are **unallowable** EXCEPT when they:
 - require circuitous routing,
 - require travel during unreasonable hours,
 - excessively prolong travel,
 - greatly increase the duration of the flight,
 - result in increased cost that would offset transportation savings, or
 - offer accommodations not reasonably adequate for the medical needs of the traveler.
- 47 C.F.R. 301-10.131 10.143

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Travel – NSF and NASA Regulations

- NASA
 - 14 CFR § 1260.36
- NSF
 - NSF Grant General Conditions, Article 10
 - “Expenses for transportation, lodging, subsistence and related items incurred by project personnel and by outside consultants employed on the project who are travel status on business related to an NSF-supported project are allowable as prescribed in the governing cost principles. **The requirements for prior approval detailed in the governing cost principles are waived.**”
 - NSF AAG Chapter V.B.4

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Travel Example

FACTS:

- General Smith received orders authorizing leave travel for himself and his wife. Mrs. Smith obtained tickets on a foreign air carrier for portions of her travel. General Smith says he was unaware of the Fly American requirement.
- General Smith obtained a statement by an employee of the travel agent stating that all American carriers were booked on the dates that Mrs. Smith traveled and that the foreign carrier's flight was less expensive and more direct.

OUTCOME:

- GAO found that a lack of knowledge of the Act is not sufficient justification for failure to comply with it
- The travel agent's letter stating no U.S. carriers were available is insufficient to demonstrate the necessity for using a non-U.S. carrier.

- See B-234719, Sep 15, 1989

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Bad Debts

- “Bad debts, including losses (whether actual or estimated) arising from uncollectible accounts or other claims, related collection costs, and related legal costs, are unallowable.”
 - A-21: 2 CFR Part 220, App. A, ¶ 6
 - A-122: 2 CFR Part 230, App. B, ¶ 5
 - A-87: 2 CFR Part 225, App. B, ¶ 5

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Bad Debts Example

- recipient's director failed to pay vehicle insurance premium and purchased substitute insurance. Later, questions arose as to whether the director had defrauded the recipient as to the insurance money. As a result, recipient's audit revealed an account receivable deficit of almost \$10k.
- UNALLOWABLE. Even though recipient requested a waiver until it could resolve the legal issues, DAB determined the cost was still unallowable as recipient had an absolute responsibility for ensuring allowable expenditure of its grant funds.
 - *Dallas-Selma Community Action Agency, DAB 1171 (1990)*

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Fundraising

- Organized fundraising costs are unallowable:
 - Financial campaigns
 - Endowment drives
 - Solicitation of gifts and bequests
 - Expenses incurred solely to raise capital or obtain contributions
- Costs of investment counsel and staff are unallowable.
 - Exceptions:
 - 2 CFR 225: investment costs covering pensions and self-insurance allowable
 - 2 CFR 220: costs related to physical security/control of monies allowable

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Fundraising Example

- recipient held a meeting that it expressly termed a “fundraising” meeting in its own internal records. The meeting’s purpose was to raise capital contributions. The recipient attempted to charge the meeting to its grant as a direct cost.
- UNALLOWABLE. Fundraising is an unallowable cost. It may not be charged as a direct or an indirect cost to a grant, regardless of the purpose of the organization.
 - *LEGIS 50/The Center for Legislative Improvement* , DAB 048 (1978)

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Attorney's Fees for Litigation

- See 2 CFR § 220, App. A, ¶ J(13)
- Costs incurred in connection with any criminal, civil or administrative proceeding commenced by the Federal Government, or a State, local or foreign government are **NOT ALLOWABLE**
- It is a violation of, or failure to comply with, a Federal, State, local or foreign statute or regulation by the organization (including its agents and employees), and it may result in any of the following dispositions ...

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Attorney's Fees for Litigation

- Conviction
- Determination of organizational liability
- Imposition of monetary penalty
- Final decision by Federal official to debar or suspend, or to void an award for failure to comply with law or regulation
- A disposition by consent or compromise, if the action could have resulted in any of the dispositions described in any of the above
- If more than one proceeding involves the same alleged misconduct, the costs of all such proceedings shall be unallowable if any one of them results in one of the dispositions above
 - See 2 CFR § 220, App. A, ¶ J(13)

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Attorney's Fees for Litigation Example

- recipient claimed \$20k in legal fees as an indirect cost to its grant. The fees were incurred during defense of the recipient and its president in a grand jury investigation related to fraudulent consultant fees charged to the grant.
 - UNALLOWABLE. Even though the recipient and its president were exonerated by the grand jury, the DAB determined that it could still make its own judgment. As the legal fees arose from recipient's improper conduct, the legal fees were unallowable.
 - *Humanics Associates*, DAB 860 (1987)

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Professional Service Costs

- “Cost of professional and consultant services rendered by persons or organizations that are members of a particular profession or possess a special skill, whether or not officers or employees of the governmental unit, are **allowable**...when reasonable in relation to the services rendered and when not contingent upon recovery of the costs from the Federal Government.
- “Retainer fees supported by evidence of bona fide services available or rendered are **allowable**.”
 - A-21: 2 CFR Part 220, App. A, ¶ 37
 - A-122: 2 CFR Part 230, App. B, ¶ 37
 - A-87: 2 CFR Part 225, App. B, ¶ 32

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Attorney's Fees/Professional Consultation

- Attorneys fees allowable for legal advice:
 - Allowable for audit defense
 - Through entire audit resolution process, but some agency exceptions:
 - Not allowed if HHS DAB Appeals Board
- Procurement
 - Competition preferred unless special expertise justified
 - Always perform Cost analysis
 - Market search
 - Check other hourly rates

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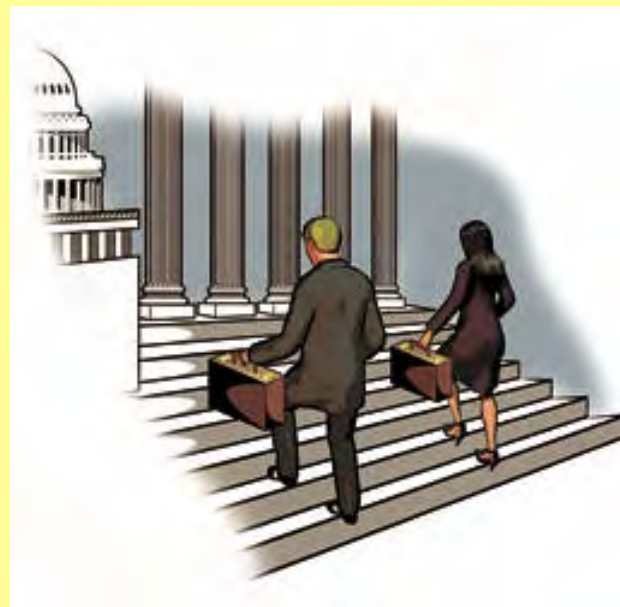
Sarbanes-Oxley Act, Pub.L. 107-204

- Section 203: Audit Partner Rotation.
- “The lead audit or coordinating partner and the reviewing partner must rotate off of the audit every 5 years.”
- A-133 Audit Firms should periodically be re-competed

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Lobbying



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Lobbying (2 C.F.R. 225)

- Lobbying IS included in the cost principles
 - Influencing activities associated with obtaining grants, cooperative agreements, and loans is an unallowable cost
 - Costs incurred in attempting to improperly influence, either directly or indirectly, an employee or officer of the Executive branch to consider a Federally-sponsored agreement or regulatory matter on any basis other than the merits of the matter

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Lobbying (2 C.F.R. 230)

- Certain exceptions apply for nonprofits:
 - Providing a technical and factual presentation of information on a topic directly related to the performance of a grant, contract or other agreement in response to a documented request by member of federal or state legislature or his/her staff
 - May lobby the State legislature to influence legislation to directly reduce the cost, or to avoid material impairment of the organization's authority to perform the grant, contract, or other agreement
 - Any activity specifically authorized by statute to be undertaken with funds from the grant, contract, or other agreement

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Lobbying

BYRD ANTI-LOBBYING AMENDMENT (31 USC § 1352)

- Prohibits Federal grant recipients (and recipients of cooperative agreements) from using Federal funds to lobby the Federal government;
- Requires each person or entity who requests/receives a Federal grant or cooperative agreement > \$100,000 to certify that they will not use Federal funds to lobby and to disclose lobbying undertaken with non-Federal funds
- Applies to sub-recipients and sub-contractors receiving > \$100,000 in Federal funds

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Lobbying

- LOBBYING DISCLOSURE ACT OF 1995 (2 USC § 1601)
- Any organization employing one or more lobbyists and making lobbying-related expenditures that exceed (or are expected to exceed) \$22,500 within a 6-month period must register and file a semi-annual report 45 days after the end of the respective 6-month period
- A lobbyist is defined as an individual employed or retained for compensation to make more than one lobbying contact and who, over a 6-month period, spends more than 20% of his or her time for that employer/client on lobbying activities (and makes at least one contact)

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Lobbying

■ What is Lobbying?

- (A) Visiting Capitol Hill to meet with your Congressman about your organization
- (B) Visiting Capitol Hill to meet with your Senator to ask for Stimulus funds for your organization
- (C) Paying membership dues to an organization that holds briefings for Congress on issues that are important to you and your members
- (D) Testifying before Congress about your organization's need for disaster relief funds

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Lobbying

- What is NOT lobbying?
 - Technical and Factual Representations About Grants
 - Educating Congress about program
 - Requested by Congress
- Travel expenses not allowable unless formal testimony or hearing
- Need other source of funds
 - Not matching dollars

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Lobbying

- Associations
 - Portion of membership dues may not be allowable if supports lobbying activities
 - Be sure that lobbying expenses are separately billed by association and paid by recipient using non-federal or matching dollars
 - If 501(c)(6) – Predominately lobbying organization – membership dues not allowable cost

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■ BONUS QUESTION

- Your organization receives a \$250,000 grant from NSF . You award a subgrant of \$100,000 to another organization. Who has to disclose their lobbying expenses?
 - (A) Your organization
 - (B) The subrecipient
 - (C) Both your organization and the subrecipient
 - (D) Neither your organization nor the subrecipient

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Lobbying Example

- recipient spent money on a campaign to urge beneficiaries of its program to write to their Congressional representatives to object to proposed cuts in program funding. Is this unallowable lobbying?
 - UNALLOWABLE. Even if the amount spent is small, recipients may not expend federal funds to finance grassroots lobbying of Congressional representatives.
 - GAO decision B-208465 (California State Univ. Northridge)

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Program Income



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Program Income Defined

- **“Program income** means gross income earned by the recipient that is directly generated by a supported activity or earned as a result of the award.
- “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 federally-funded projects,
 - the sale of commodities or items fabricated under an award,
 - license fees and royalties on patents and copyrights, and
 - interest on loans made with award funds.”

- 14 CFR § 1260.102

- See *also* NSF Grant General Conditions, Article 20.a

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Program Income

- Does Not Include:
 - Interest earned on advances of Federal funds is not program income.
 - The receipt of principal on loans, rebates, credits, discounts, etc., or interest earned on any of them.
 - 2 CFR § 215.2(x)
- Most agencies also exclude:
 - Licensing fees
 - Royalties – videos, publications
 - 2 CFR § 215.24(h)
- Federal dollars supported the costs incurred in generating the program income
- After award period ends, no federal obligation

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Program Income - 2 CFR § 215.24/A-110

■ **Application of Program Income**

- **Additive** → add it to the funds that are committed to the project and use them to further eligible project objectives
 - **Default** treatment if research grant
- **Applied to the non-Federal share** of the project
- **Deductive** → deduct it from the total project allowable cost in determining the net allowable costs on which the Federal share of costs is based
 - **Default** treatment for all but research grants if agency fails to specify

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NASA's and NSF's Program Income is Additive

- Program income earned during the project period shall be retained by the recipient and **added to funds** committed to the project by NASA and the recipient, and used to further eligible project or program objectives, unless NASA indicates in the terms and conditions of the award another alternative to account for program income or the recipient is subject to special award conditions, as indicated in § 1260.114.”

- 14 CFR § 1260.124(b)

- See *also* NSF's Grant General Conditions, Article 20.b

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Program Income

- Under cost share or matching grants:
 - Does Federal Government have right to direct the use of all program? I say no because non-federal dollars usually expended as well as federal dollars
 - Some federal agencies have rules or guidance directing that only a portion of program income must be expended as directed by the agency
 - Some federal agencies rely upon the definition of program income to broadly assert a federal interest in all program income

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Program Income, 2 CFR § 215.24

■ Excess Program Income

- If earn more than required for match percentage, then you have “excess” program income
 - Deduct excess program income from total project allowable costs and determine net on which the federal share of costs is based
 - Refund the federal portion of program income to the agency

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Program Income

- If additive method, how must it be spent?
- Some agencies direct you to submit a proposal and budget
- Some agencies only require that it be expended in furtherance of the statutory purpose of the grant
- Some agencies require it to be spent in strict accordance on activities covered in the award agreement

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Reporting Program Income

- Must be reported
- Account for total program Income earned during the reporting period
- Costs incurred are deducted
- Note your excess program income
 - Post Award – it belongs to you

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Reporting Program Income

- Use SF 269 or new Federal Financial Report (“FFR”)
 - The FFR was finalized and approved on October 9, 2008 and became effective on October 1, 2009.
 - It replaces the current SF-269, SF-269A, SF-272, and SF-272A forms concerning financial status reports a federal cash transactions reports.
 - The purpose of the FFR is to give recipients of grants and cooperative agreements a simplified, standard format for reporting the financial status of their awards.
 - <http://federalgrantslaw.com/AllFolders/Grants/FFR.pdf>

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Program Income

- Anchorage Neighborhood Health Center, DAB Decision No. 561 (1984):
 - recipient applied program income to meet its non-federal share requirement.
 - The regulations provide, in general, that a non-federal share requirement be met by allowable costs incurred by a recipient. See 45 CFR 74.52.
 - Excess Program Income may be expended on **costs not otherwise allowable** for federal awards
 - If Additive - Need only be in furtherance of grant purpose
 - Pre-OMB A-110 Common Rule

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Program Income

- **Subrecipient Program Income**
 - Be clear in the subaward regarding treatment of program income
 - IG auditors will enforce the requirement contained in your award agreement
 - But, as a recipient, you should have right to determine how to use the program income
 - It's best is to use additive method and require expenditures in furtherance of grant purpose

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Revision of Budget and Scope of Project

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Budget Flexibility – 14 CFR § 1260. 125 (NASA)

“(b) Recipients are required to report deviations from budget and program plans, and request prior approvals for budget and program plan revisions, in accordance with this section.”

BUT

“(d) No other prior approval requirements for specific items may be imposed unless a deviation has been approved by OMB.”

What Does (c) say?

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Budget Flexibility, Cont.

(c) For nonconstruction awards, recipients shall request prior approvals from NASA for the following program or budget related reasons, except the item in paragraph (c)(5) of this section, which is waived by NASA:

- (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 award document.
- (3) The absence 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 need for additional Federal funding.
- **(5) The transfer of amounts budgeted for indirect costs to absorb increases in direct costs, or vice versa. (PRIOR APPROVAL WAIVED FOR NASA)**

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Budget Flexibility, Cont.

- (6) The inclusion, unless waived by the Federal awarding agency, of costs that require prior approval in accordance with OMB Circular A-21, "Cost Principles for Educational Institutions," OMB Circular A-122, "Cost Principles for Non-Profit Organizations," or 45 CFR part 74 Appendix E, "Principles for Determining Costs Applicable to Research and Development under Grants and Contracts with Hospitals," or 48 CFR part 31, "Contract Cost Principles and Procedures," as applicable.
- (7) The transfer of funds allotted for training allowances (direct payment to trainees) to other categories of expense.
- (8) Unless described in the application and funded in the approved awards, the subaward, transfer or contracting out of any work under an award. This provision does not apply to the purchase of supplies, material, equipment or general support services.

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SF-424: Your Budget Form

- Grants.gov established the Standard Forms 424 (SF-424) Form Families as the core government-wide standard data sets and forms for grant application packages, reducing the administrative burden on recipients.
- The SF-424 Form Families includes the following government-wide grant application coversheets, forms, form data analysis templates, and form schemas:
 - Standard Form
 - Research & Related Form
 - Mandatory Form
 - Short Organizational Form
 - Individual Form
 - Key Contacts Form
 - Project Abstract Form
- See http://www.grants.gov/agencies/aapproved_standard_forms.jsp

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Changes in Budget

- Budget Plan for federal funds and may include non-federal share
 - IG Auditor enforces all terms upon non-federal share
 - Must treat non-federal share as if federal dollars
- Required to report Deviations in budget and project plan

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Changes in Scope

PRIOR APPROVALS REQUIRED:

- Report Change in Scope – See GAO Redbook, page 10-107 ff.
 - Redbook notes that 58 Comp. Gen. at 681 defines “Scope” as “grow[ing] out of the grant purposes. These purposes must be referred to in order to identify those aspects of a grant that make up the substantial and material features of a particular grant which in turn fix the scope of the governments obligation.”
 - See also 15 CFR § 24.21(a)
 - Focus on statutory purpose and Proposal
 - Even if no budget change

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Changes in Objectives or Scope – NSF

- “A proposed change in the phenomenon or phenomena under study or the objectives of the project stated in the proposal or agreed modifications thereto should be communicated to NSF via use of the FastLane notification and request module at <https://www.fastlane.nsf.gov/fastlane.jsp>.
- NSF approval of such changes will be by an amendment to the award signed by the NSF Grants Officer.”
 - NSF Grant General Conditions, Article 8.b

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How Much Change is Significant?

- Key personnel changes – Requires prior agency approval!
 - Principal Investigator or Project Director
 - Absence of more than 3 months
 - 25% reduction in time devoted to project
- Watch for a 5% change in time and effort reporting – this is considered a significant change! Be sure accounting records reflect change in apportionment

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Absence or Change of Principal Investigator – NSF

- “If a named Principal Investigator or Project Director plans to or becomes aware that he or she will:
 - (1) devote substantially less effort to the work than anticipated in the approved proposal (defined as a reduction of 25% or more in time);
 - (2) sever his or her connection with the recipient organization; or
 - (3) be absent for a continuous period of three months or more, or otherwise relinquish active direction of the project, he or she shall advise both the NSF Program Officer and the recipient's Authorized Organizational Representative via use of the NSF FastLane Notification and Request module.
- Action appropriate to the situation will be initiated in accordance with the guidelines described in AAG Chapter II.B.2.
 - NSF Grant General Conditions, Article 8.c

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Changes in Budgets or Scope of Project

- Need more federal funds
- Transfers between direct and indirect costs
- Cost Principles may require prior approval
- Transfers of funds allotted for training
- Subaward of substantive work under grant
- Geographical change

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Changes in Budgets or Scope of Project

- Agency may waive prior approvals for:
 - Pre-Award costs – 90 days
 - One-time No Cost Extension of Time
 - Carry forward balances of funds
 - Automatically Waived for research awards
 - NASA waives prior approvals, too
- **NO OTHER PRIOR APPROVAL REQUIREMENTS** may be imposed by awarding agency unless a deviation is approved by OMB

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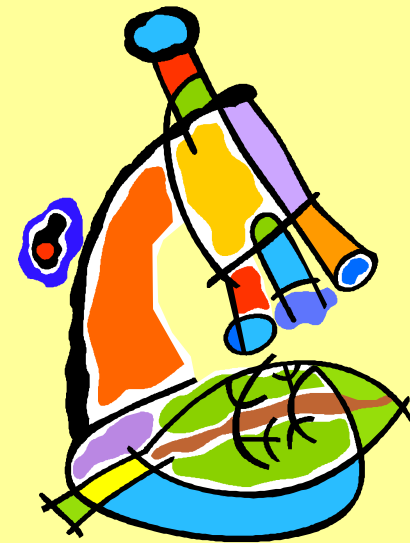
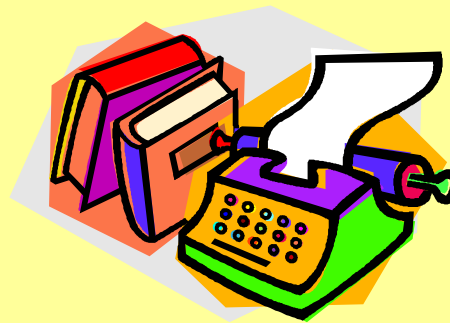
Changes in Budget

- Use budget form to request approval
- Allow 30 days for response
- If not received in 30 days, agency must report when it will respond

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Real Property, Equipment, Supplies, and Intangible Property



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Property Trust Relationship – 14 CFR § 1260.137

- “Real property, equipment, intangible property and debt instruments that are acquired or improved with Federal funds shall 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. Agencies may require recipients to record liens or other appropriate notices of record to indicate that personal or real property has been acquired or improved with Federal funds and that use and disposition conditions apply to the property.”

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Real Property and Equipment

- In general ...
 - The use of grant funds to cover the costs of acquiring or leasing buildings and equipment, including the costs of amortizing the principal of, and paying the interest on, loans
 - Property or equipment purchased or improved, in whole or in part, with federal grant funds cannot be encumbered, put to a different use or disposed of without agency approval

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Real Property

- Real property = “land, including land improvements, structures and appurtenances thereto, but excludes movable machinery and equipment.”
 - 14 CFR § 1260.102

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- Title and federal reversionary interest
 - The federal government retains a reversionary interest in all property/equipment acquired (or improved), in whole or in part, with federal grant funds
 - Title vests in the recipient, subject to the recipient's continued use for authorized purpose
 - The recipient should obtain insurance as if it wholly owns the property

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Property Use, Disposition, and Vesting of Title – NASA

- (b) Vesting of title to property acquired by the recipient shall conform to the following procedures:
 - (1) For awards to educational institutions and **non-profit organizations**, special purpose and general purpose equipment costing in excess of \$5,000 (unless a lower threshold has been established by the recipient) acquired by the recipient under a grant or cooperative agreement for the purpose of research shall be titled to the recipient as "exempt" equipment as set forth at § 1260.133(b). (see next slide)
 - The recipient shall have no further obligation or accountability to the Federal Government for the use or disposition of "exempt" property, including reporting requirements. Special purpose and general purpose equipment costing in excess of \$5,000 (unless a lower threshold has been established by the recipient) acquired by the recipient under a grant or cooperative agreement for non-research work shall be titled to the recipient in accordance with § 1260.134.
- 14 CFR § 1260.74(b)(1)

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Exempt Property

- “NASA has determined to vest title to property acquired with Federal funds in the recipient without further obligation to NASA, including reporting requirements.”
 - 14 CFR § 1260.133(b)
- “The head of an executive agency may vest title in tangible personal property in a nonprofit institution of higher education or in a nonprofit organization whose primary purpose is conducting scientific research—
 - (1) when the property is bought with amounts provided under a procurement contract, grant agreement, or cooperative agreement with the institution or organization to conduct basic or applied scientific research;
 - (2) when the head of the agency decides the vesting furthers the objectives of the agency;
 - (3) without further obligation to the United States Government; and
 - (4) under conditions the head of the agency considers appropriate.”
 - 31 USC 6306

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Title To Federally Owned Property, 14 CFR § 1260.74(d)

- “(d) Title to Federally-owned property remains with the Government, and is subject to the following additional requirements:
 - (1) In accordance with Public Law 94-519, NASA will not acquire property from other agencies for use on NASA grants.
 - (2) Government property provided to a grant recipient for use under a grant will be identified through inclusion of the special condition at § 1260.66, Listing of Reportable Equipment and Other Property.
 - (3) When Federally-owned property is reported excess by a recipient, the administrative grant officer will report the equipment to the center industrial property officer, who will consult with the technical officer concerning property disposition.
 - (4) NASA policy encourages the donation of existing, excess NASA property to nonprofit organizations whose primary purpose is the conduct of scientific research.”

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Real Property – NSF

- “In the rare instances where NSF grants might involve the acquisition of real property and unless otherwise specified in the grant document, the real property standards of 2 CFR § 215.32 are applicable to such NSF grants.
- “Title to materials developed and supplies purchased under an NSF grant will vest in the recipient.”

- NSF AAG, Chapter IV.D

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Real Property

NOFI

- The recipient must file notice regarding a federal reversionary interest in real property acquired with grant funds in the local real estate/deeds office
- This notice is intended to advise third parties that the recipient may not encumber, share, put to a different use or dispose of such property/equipment without agency approval
- Fees incurred for the filing can be charged to the grant award

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Sample Notice of Federal Interest

- On [date], the National Science Foundation awarded Grant No. _____ to [insert name of recipient]. The grant provides Federal funds for [describe purpose of grant, e.g., construction, alteration/repair/renovation], which is located on the property described below in _____ County, State of _____:
- (recipient INSERT LEGAL DESCRIPTION OF PROPERTY)
 - Description should include specificity to determine if the Federal interest applies to the land, building, or part thereof. Street or campus address should be included whenever possible.
- The Notice of Grant Award for this grant includes conditions on use of the aforementioned property and provides for a continuing Federal interest in the property. Specifically, the property may not be...

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Sample Notice of Federal Interest, ctd

- (1) used for any purpose inconsistent with the statute and any program regulations governing the award under which the property was acquired;
- (2) mortgaged or otherwise used as collateral without the written permission of the National Science Foundation (NSF), National Aeronautics and Space Administration and (NASA), or designee; or
- (3) sold or transferred to another party without the written permission of National Science Foundation (NSF), National Aeronautics and Space Administration and (NASA), or designee, or its designee. These conditions are in accordance with the statutory provisions set forth in the American Recovery and Reinvestment Act, Title 45 CFR § 602.31(c) or A-110 (as appropriate), the NASA Grant and Cooperative Agreements Handbook , and other terms and conditions of award.
- These grant conditions and requirements cannot be nullified or voided through a transfer of ownership. Therefore, advance notice of any proposed change in usage or ownership must be provided to the Associate Administrator, National Science Foundation (NSF), National Aeronautics and Space Administration and (NASA) or designee.

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Real Property

- If the recipient desires to re-finance real property to which a reversionary interest has attached, it will likely have to request that the agency subordinate its interest in favor of the lender, which generally will be approved if it can be shown that
 - Substantive programmatic benefit will accrue both to the recipient and to the government
 - The government receives a “compensating benefit” (financial in nature)
 - The use of the property is consistent with statutory purposes of grant

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Real Property

- Use and disposition of real property
 - If no longer needed for original federally-sponsored project, must obtain agency approval to use in another federally-sponsored project
 - Agency can permit the recipient to retain title, or direct the sale or transfer of real property
 - If agency instructs the recipient to transfer real property to the government or to a third party, the recipient will be entitled to the percentage of Fair Market value (FMV) attributable to the recipient

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Real Property

■ Federal Interest

What is Implication of Federal Interest?

Disposition Instructions!

Feds can tell you to:

1. Retain Property and pay Fed for its fair share;
2. Dispose of property and pay Fed for its fair share;
3. Transfer property to Fed or to third party

And Don't Forget the Notice of Federal Interest

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Real Property and Equipment

- Federal Interest
 - Under 2 CFR 215.2/OMB Circular A-110 _____.2, “Federal Share” is defined as:
(q) **Federal share** of real property, equipment, or supplies means that percentage of the property's acquisition costs and any improvement expenditures paid with Federal funds.

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Real Property

Disposition

Feds can tell you to:

1. Retain Property and pay Fed for its fair share;
2. Dispose of property and pay Fed for its fair share of fair market value;
3. Transfer property to Fed or to third party

And Don't Forget the NOFI.....

See 14 CFR § 1260.132(c)

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Real Property

- Property is titled in recipient's name
- Feds retain federal share/interest
- recipient to file NOFI



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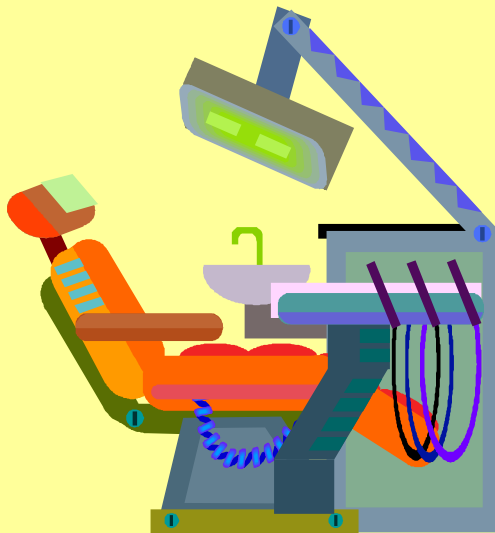
Tilton v. Richardson, 403 U.S. 672 (1971)

- The United States retains a 20-year interest in any facility constructed with funds under the Act, and if, during this period, the recipient violates the statutory conditions, the Government is entitled to recovery of funds.
- “This 20-year period is termed by the statute as ‘the period of Federal interest’ and reflects Congress’ finding that after 20 years ‘the public benefit accruing to the United States’ from the use of the federally financed facility ‘will equal or exceed in value’ the amount of the federal grant.”

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Equipment



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Equipment

■ Equipment Defined

- “Tangible, non-expendable personal property including exempt property charged directly to the award having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit. However, consistent with recipient policy, lower limits may be established.”

■ Federal Share

- The percentage of the property's or supplies' “acquisition costs and any improvement expenditures paid with Federal funds.”

- 14 CFR § 1260.102

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31 USC 6306

- Authority to vest title in tangible personal property
- In institution of higher education
- In non-profit research organization with primary mission of conducting basic or applied research
- Head of agency vests title
- Without further obligation to federal government
- Under agency conditions

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Equipment – NASA

- “(a) For grants and cooperative agreements for the purpose of research, NASA's policy is to vest title to property acquired with Federal funds in the recipient without further obligation to NASA, including reporting requirements, as set forth at § 1260.133(b).
- “For grants and cooperative agreements for non-research purposes, and in the exceptional circumstance where a deviation is requested for a grant or cooperative agreement for research to not vest title in the recipient as exempt, equipment shall vest in the recipient subject to conditions of this section.
- “These policies are not applicable to grants and cooperative agreements with commercial firms (see § 1260.74(b)(2) and § 1274.401.)”

- 14 CFR § 1260.134

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NASA Specific Equipment

- “The recipient shall use the equipment in the project or program for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds and shall not encumber the property without approval of NASA. When no longer needed for the original project or program, the recipient shall use the equipment in connection with its other federally-sponsored activities, in the following order of priority:
 - (1) Activities sponsored by NASA, then
 - (2) Activities sponsored by other Federal agencies.”

- 14 CFR § 1260.134(c)

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Equipment – NSF

- Title to Equipment – Non-profit Organizations
 - “Unless otherwise specified in the grant, title to equipment purchased or fabricated with NSF grant funds shall vest in the recipient upon acquisition. Such equipment is considered exempt property and shall be acquired and used in accordance with [the] paragraph below.”
- Conditions for Acquisition and Use of Equipment
 - Recipient Assurance. The recipient will assure that each purchase of equipment is:
 - (a) necessary for the research or activity supported by the grant;
 - (b) not otherwise reasonably available and accessible;
 - (c) of the type normally charged as a direct cost to sponsored agreements; and
 - (d) acquired in accordance with organizational practice.
 - NSF Grant General Conditions, Article 6(a) and (c)

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Equipment

- Equipment shall be used by the recipient or subrecipient in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by federal funds.
 - Make equipment available for other projects or programs currently or previously supported by Federal funds
- Property or equipment purchased or improved, in whole or in part, with federal grant funds cannot be encumbered, put to a different use, or disposed of without agency approval
- **Internal Controls**
 - A written “fixed asset” policy consistent with the requirements
 - Prior review of each proposed purchase to ensure the equipment is needed and not already in the recipient’s possession

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Equipment

- Use and Disposition of Equipment with Current Value of \$5000 or more
 - If no longer needed for original federally sponsored project, may use in another federally sponsored project or retain title for authorized uses **without** agency approval
 - However, if the recipient no longer needs equipment for **any** federally sponsored use, it must either
 - Request permission to retain title for other uses
 - Obtain disposition instructions from the agency
 - Agency must issue instructions within 120 days
- See 14 CFR § 1260.134(g)

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Equipment

■ Recordkeeping Requirements

- recipients must maintain records for equipment **acquired or improved** with grant funds
- The records must
 - Adequately describe the equipment
 - Identify the equipment by serial, model, or other ID number
 - Identify the source of funds, including award number
 - Note whether title vests in recipient or government
 - Provide the acquisition date and cost
 - Information used to calculate federal share

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Equipment

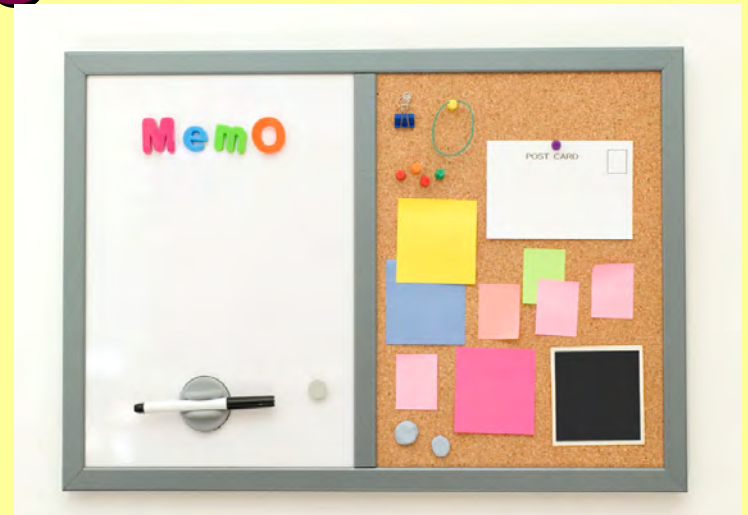
- **Recordkeeping Requirements (cont.)**
 - The records must also
 - Identify the equipment's location and condition and the reporting date
 - Provide the unit acquisition cost
 - Provide the ultimate disposition data, including date, sale price, method used to determine fair market value
 - At least every two years, the recipient must inventory its equipment and reconcile results with prior inventories
- See *also* Grant and Cooperative Agreement Handbook, Subpart B, § 1260.134(f)
- ***NEW PROPERTY REPORTING FORMS SF 428***

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Supplies



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Supplies

- “Supplies” means “all personal property
 - excluding equipment, intellectual property, and debt instruments as defined in this section, and inventions of a contractor conceived or first actually reduced to practice in the performance of work under a funding agreement ("subject inventions"), as defined in 37 CFR Part 401.”
- 14 CFR § 1260.102

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Title to and Disposition of Supplies – NASA

- “Title to supplies and other expendable property shall vest in the recipient upon acquisition. If there is a residual inventory of unused supplies exceeding \$5,000 in total aggregate value upon termination or completion of the project or program and the supplies are not needed for any other federally-sponsored project or program, the recipient shall retain the supplies for use on non-Federal sponsored activities or sell them, but shall, in either case, compensate the Federal Government for its share. The amount of compensation shall be computed in the same manner as for equipment.”

■ 14 CFR § 1260.135(a)

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Intangible Property

- **Intangible property and debt instruments** means, but is not limited to, trademarks, copyrights, patents and patent applications and such property as loans, notes and other debt instruments, lease agreements, stock and other instruments of property ownership, whether considered tangible or intangible.
 - 14 CFR § 1260.102
- The recipient may secure a copyright in materials created with grant support, but the federal government retains a royalty-free, non-exclusive and irrevocable right to reproduce, publish and use the work (and to allow third parties to do so).
 - 14 CFR § 1260.136(a)

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Intangible Property

- Copyrights
- Data
- Inventions
- Federal march-in rights
- iEdison reporting - <https://s-edison.info.nih.gov/iEdison/>
- Bayh-Dole Act 37 CFR Part 401
 - Regulations implementing federal patent and licensing policy regarding "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms". The Department of Commerce is designated as the federal agency to promote commercialization and to assume responsibility for maintaining these rules.

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Research Data

- (i) *Research data* is defined as 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 does not include:

- (A) 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
- (B) 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.

- 14 CFR § 1260.136(d)(2)

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Inventions – 14 CFR § 1260.59A

- (a) As used in this provision:
 - (1) The term "invention" means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code, or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C. 2321 et seq.).
 - (2) The term "made" when used in relation to any invention means the conception or first actual reduction to practice of such invention.
- (b) The Recipient shall report promptly to the grant officer each invention made in the performance of work under this grant. The report of such invention shall—
 - (1) Identify the inventor(s) by full name; and
 - (2) Include such full and complete technical information concerning the invention as is necessary to enable an understanding of the nature and operation thereof.

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Inventions – 14 CFR § 1260.59A

- (c) Reporting shall be made on NASA Form 1679 Disclosure of Invention and New Technology (Including Software).
- (d) The Recipient hereby grants to the Government of the United States of America, as represented by the Administrator of the National Aeronautics and Space Administration, the full rights, title, and interest in and to each such invention throughout the world.

**See also NSF's Grant General Conditions,
Article 22**

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NASA Patent Rights – 14 CFR § 1260.28

- The award is subject to the provisions of 37 CFR 401.3(a) which requires use of the standard clause set out at 37 CFR 401.14 "Patent Rights (Small Business Firms and Nonprofit Organizations)" and the following...
 - The following item is added to the end of paragraph (f) of the "Patent Rights" clause:
 - "(5) The Recipient shall include a list of any Subject Inventions required to be disclosed during the preceding year in the performance report, technical report, or renewal proposal. A complete list (or a negative statement) for the entire award period shall be included in the summary of research."
 - The term "subcontract" in paragraph (g) of the "Patent Rights" clause shall include purchase orders.

- Cont'd.

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NASA Patent Rights – 14 CFR § 1260.28

- The following requirement constitutes paragraph (I) of the "Patent Rights" clause:
 - **"(I) Communications.** A copy of all submissions or requests required by this clause, plus a copy of any reports, manuscripts, publications or similar material bearing on patent matters, shall be sent to the Center Patent Counsel and the NASA Grant Officer in addition to any other submission requirements in the grant provisions. If any reports contain information describing a "subject invention" for which the recipient has elected or may elect to retain title, NASA will use reasonable efforts to delay public release by NASA or publication by NASA in a NASA technical series until an application filing date has been established, provided that the Recipient identify the information and the "subject invention" to which it relates at the time of submittal. If required by the NASA Grant Officer, the Recipient shall provide the filing date, serial number and title, a copy of the patent application, and a patent number and issue date for any "subject invention" in any country in which the Recipient has applied for patents."

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NASA Patent Rights – 14 CFR § 1260.28

- In the event NASA contractors are tasked to perform work in support of specified activities under a cooperative agreement and inventions are made by Contractor employees, the Contractor will normally retain title to its employee inventions in accordance with 35 U.S.C. 202, 14 CFR Part 1245, and Executive Order 12591. In the event the Contractor decides not to pursue rights to title in any such invention and NASA obtains title to such inventions, NASA will use reasonable efforts to report such inventions and, upon timely request, will use reasonable efforts to grant the Recipient an exclusive, or partially exclusive, revocable, royalty-bearing license, subject to the retention of a royalty-free right of the Government to practice or have practiced the invention by or on behalf of the Government.

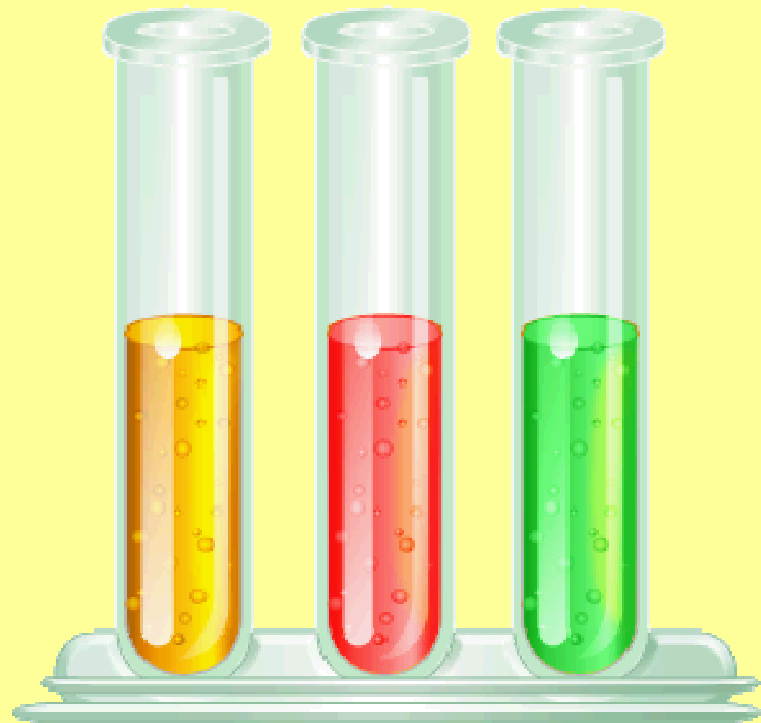
See also NSF's Grant General Conditions under Article 22, Patent Rights.

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Intangible Property

- New requirement for Research Data
- If the research from your project results in a new governmental regulation, you will then be subject to FOIA.
- See 14 CFR § 1260.136(d)



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Standardized Property Reports

■ Real Property Report

- To be used to report real property status or to request agency instructions on real property that was or will be provided by a grant or cooperative agreement, including improvements to real property using Federal funds and real property that was donated to a Federal project in the form of a match or cost sharing donation.

■ Tangible Property Report

- To be used by awarding agencies to collect information related to tangible personal property (equipment and supplies) when required by a Federal financial assistance award.
 - [Tangible Personal Property Report SF-428 and Instructions - Annual](#)
 - [Tangible Personal Property Report SF-428 and Instructions – Final](#)

- For more information and to download the forms, go to www.federalgrantslaw.com/ViewPage/Standardized_Forms

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Procurement



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Procurement Standards

- Procurement
 - *The acquisition by purchase, lease, or barter of property or services for the direct benefit of the recipient*
- Procurement Standards
 - OMB Circular A-110
(codified at 2 C.F.R. Part 215)
- Agency implementing regulations for A-110



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Ground Rules

- Nonprofits and others must follow the procedures in OMB Circular A-110, codified at 2 C.F.R. § § 215.40 - .48 (see agency-specific regulations in appropriate CFR)
 - NASA: 14 CFR Part 1260; NSF not codified.
- Tip: *Review your policies against these regulations.*

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Simplified Acquisition Threshold

- **41 U.S.C. 403(11)**
- **Simplified Acquisition Threshold = \$100,000**
 - Above this amount, numerous additional requirements kick in
 - Below this amount you have more latitude
- You need to decide if \$100,000 is too high or too low for your agency.
 - You may want additional requirements for procurements over \$25,000 or \$50,000

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Recipient Responsibilities

- NASA: 14 C.F.R. § 1260.141
- NSF: Grant General Conditions, Article 9
 - The recipient is responsible for vendor agreements and must engage in procurements as a prudent person with decisions being subject to the cost principles
 - If there is a dispute over a vendor agreement, the recipient will be sued, not the federal government.
 - No privity of contract

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Steps to a Successful Procurement



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Steps to a Successful Procurement

Prerequisites (*i.e.* before you start!):

- ✓ Written **procurement procedures**
- ✓ Have a written **code of conduct/standards of conduct** in place
- ✓ Determine that it is more efficient and effective to contract for a service, as opposed to directly providing the service

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Written Procurement Procedures

- 2 C.F.R. § 215.42 / 14 C.F.R. § 1260.141
- recipients are required to establish **written procurement procedures** designed to ensure that they obtain the best quality goods/services at the lowest cost
 - Avoid purchasing unnecessary items
 - Analyze lease versus purchase options
 - Address the information to be provided in solicitations issued by the recipient and in the responses

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Written Codes of Conduct/Standards of Conduct

- 2 C.F.R. § 215.42 / 14 C.F.R. § 1260.142
- recipients should develop **written standards of conduct** (or a code of conduct) that
 - Apply to all Board members, officers, employees, and agents who are engaged in the award and administration of procurement contracts
 - Work in conjunction with the Board's conflict of interest policies
 - Must be workable and readable
 - recipients should provide training on standards for board and employees

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Written Codes of Conduct/Standards of Conduct

- **Real or Apparent Conflict of Interest**
- 2 C.F.R. § 215.42 / 14 C.F.R. § 1260.142
- Such a conflict 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 the firm selected for an award

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Written Codes of Conduct/Standards of Conduct

- Your policy should define
Immediate Family
 - Generally accepted definition includes spouses, parents, siblings, and in-laws
- This definition does not always work in today's society
 - Should also include two individuals that live together in a committed relationship
 - Others living in household



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Written Codes of Conduct/Standards of Conduct

- 2 C.F.R. § 215.42 / 14 C.F.R. § 1260.142
- No Board member, officer, employee or agent may participate in the **selection, award, or administration of a contract supported** by federal funds if a real or apparent conflict of interest would be involved



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Written Codes of Conduct/Standards of Conduct

- Contractors that develop or draft grant applications or contract specifications, requirements, statements of work, invitations for bids and/or requests for proposals are excluded from competing for such procurements



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Written Codes of Conduct/Standards of Conduct

2 C.F.R. 215.42 /14 C.F.R. § 1260.142

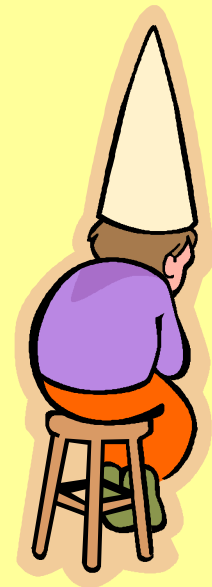
“...The recipient's or subrecipient's officers, employees or agents will **neither solicit nor accept gratuities, favors or anything of monetary value** from contractors, potential contractors, or parties to subagreements. recipient and subrecipients may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of **nominal intrinsic value...**”



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Written Codes of Conduct/Standards of Conduct

- 2 C.F.R. § 215.42 / 14 C.F.R. § 1260.142
- **Violation of Standard of Conduct**
 - Any violations to the standard of conduct should be tied to the HR policies
 - Violations can lead up to disciplinary action including termination of employment



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Written Codes of Conduct/Standards of Conduct

Disclosure of Fraud or Misconduct

- “Each recipient or sub-recipient awarded funds made available under the ARRA shall promptly refer to the **Office of Inspector General** any credible evidence that a principal, employee, agent, contractor, sub-recipient, subcontractor, or other person has committed a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving those funds.”
- NSF / NASA OIG HOTLINE
- ARRA Terms and Conditions, ¶ 6

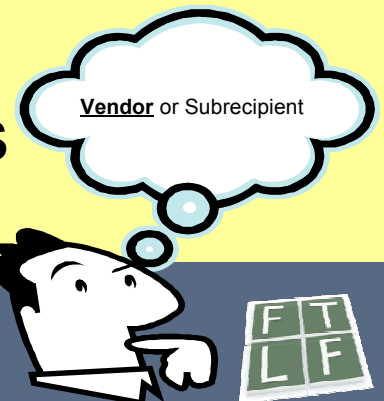
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STEP 1: Determine Whether Procurement Contract

- Vendor vs. Subrecipient
- The basic difference stems from the purpose or the nature of the money being passed from the recipient to the sub
- **Subrecipient:** Take a piece of your program (programmatic decision making)→ must comply with all regulations
- **Vendor:** Buying something to help you do your program or meet your purpose (consultant, equipment, supplies)
- If Vendor→ refer to procurement standards

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STEP 1: Subrecipient/Vendor Distinctions

OMB Circular A-133 *Audits of States, Local Governments and Non-Profit Organizations* defines:

- **Subrecipient:** “a non-Federal entity that expends Federal awards received from a pass-through entity to carry out a Federal program, but does not include an individual that is a beneficiary of such a program. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency.”
- **Vendor:** “a dealer, distributor, merchant or other seller providing goods or services that are required for the conduct of a Federal program. These goods or services may be for an organization's own use or for the use of beneficiaries of the Federal program.”

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STEP 1: Subrecipient / Vendor Distinctions

Federal award and subaward. Characteristics indicative of a Federal award received by a **subrecipient** are when the organization:

- (1) Determines who is eligible to receive what Federal financial assistance;
- (2) Has its performance measured against whether the objectives of the Federal program are met;
- (3) Has responsibility for programmatic decision making;
- (4) Has responsibility for adherence to applicable Federal program compliance requirements; and
- (5) Uses the Federal funds to carry out a program of the organization as compared to providing goods or services for a program of the pass-through entity.

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STEP 1: Subrecipient / Vendor Distinctions

Payment for goods and services. Characteristics indicative of a payment for goods and services received by a vendor are when the organization:

- (1) Provides the goods and services within normal business operations;
- (2) Provides similar goods or services to many different purchasers or clients;
- (3) 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.

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STEP 1: Subrecipient / Vendor Distinctions

Why does it Matter?

- All Award Terms and Conditions apply to Awards and Subawards of financial assistance
 - Flow Down to Subrecipient Agreement
 - Subject to full audit by IG and A-133 auditors
- Vendor Contracts are governed by procurement rules of recipient and terms of the contract

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STEP 1: Subrecipient / Vendor Distinctions

- Different Terms and Conditions such as:
 - Pricing
 - Grants are Cost Reimbursement Instruments
 - Contracts are up to you – Fixed Price
 - Budgeting
 - Restrictions apply to subrecipient agreements
 - Termination
 - Limits on Ability to Terminate/Change Subrecipient

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STEP 1: Subrecipient / Vendor Distinctions

Use of judgment in making determination.

There may be unusual circumstances or exceptions to the listed characteristics.

In making the determination of whether a subrecipient or vendor relationship exists, the substance of the relationship is more important than the form of the agreement.

It is not expected that all of the characteristics will be present and judgment should be used in determining whether an entity is a subrecipient or vendor.

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STEP 2: The Solicitation Phase

- 2 C.F.R. § 215.43 / 14 C.F.R. § 1260.143
- recipients are required to **maximize open and free competition to the extent practical**
 - Unless a vendor is uniquely qualified or a sole source procurement can otherwise be justified, recipients should seek competing offers from at least 3 providers
 - Potential bidders/offerors/contractors cannot draft specifications of a request for proposal



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STEP 2: The Solicitation Phase

Designation of Type of Contract

- Specify type of procuring instrument in your policies (the type of contract should be determined by type of situation)
 - Fixed price
 - Cost reimbursement
 - Purchase order
 - Incentive contracts
 - The “cost-plus-a-percentage-of-cost” or “percentage of construction cost” methods of contracting shall **not** be used

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STEP 2: The Solicitation Phase

Determine Method of Procurement

14 C.F.R. § 1260.144(c) provides guidance on choosing the method of procurement depending on the situation broken down in the following categories:

- Small purchase procedures
- Sealed bids
- Competitive proposals
- Minimum competition
- Noncompetitive proposals

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STEP 2: The Solicitation Phase

- Notify potential bidders of your solicitation
- 2 C.F.R. § 215.44 (b)/ 14 C.F.R. § 1260.144(b):
- Positive efforts shall be made by recipients to utilize **small businesses, minority-owned firms, and women's business enterprises**, whenever possible.
 - Use to the fullest extent practicable.
 - Make information on forthcoming opportunities available and arrange time frames to encourage and facilitate participation
 - Use the services and assistance the Small Business Administration and the Department of Commerce's Minority Business Development Agency and other similar agencies

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STEP 2: The Solicitation Phase

- Include all requirements that contractors must meet to be evaluated
- Include option for recipient to reject all bids if it is in the recipient's best interests to do so
- Ensure objective contractor performance
- Eliminate unfair competitive advantage

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STEP 2: The Solicitation Phase

- Do **not** do business with businesses or individuals who have been **debarred or suspended** (but smaller contracts exempt)
- When drafting solicitation ask for a disclosure

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STEP 3: The Selection Process

- Refer to Code of Conduct to ensure compliance
- 2 C.F.R. § 215.44 (b)/ 14 C.F.R. § 1260.144(b)
- Consider whether firms competing for larger contracts intend to subcontract with small businesses, minority-owned firms, and women's business enterprises. Encourage contracting with consortiums of small businesses, minority-owned firms and women's business enterprises

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STEP 3: The Selection Process

- “Cost analysis is the review and evaluation of each element of cost to determine reasonableness, allocability and allowability.”
 - “Some form of cost or price analysis shall be made and documented in the procurement files in connection with every procurement action.
 - “Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices and similar indicia, together with discounts.

- 14 C.F.R. § 1260.145

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STEP 3: The Selection Process

Cost and Price Analysis

- Level of detail/scrutiny increases as the dollar amount increases
- There is a difference between cost and price
- Use a price analysis 9 out of 10 times
- Use cost analysis only with sole source procurements and cost-type contracts
 - If you cannot determine what the price should be look at the cost instead (i.e. direct costs, overhead, etc)
 - Do comparison of other costs of other vendors
 - Determine cost reasonableness, allocability and allowability

- 2 C.F.R. § 215.45

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STEP 3: The Selection Process

- Evaluate offerers/bidders based on objective evaluation criteria
 - cost/price
 - appropriateness and accuracy of response
 - qualifications, experience and/or quality
- Award to contractor that is most advantageous to recipient
- Include option permitting rejection of all bids/offers if in the recipient's best interest to do so
- Put In Writing!

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STEP 3: The Selection Process

Debarment and Suspension

14 C.F.R. § 1260.144(e)

- Contracts may not be made to anyone who has been debarred or suspended if the contract is
 - Equal to or exceeds \$25,000 (for contracts made by both recipients and subrecipients).
 - For Federally required audit services

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STEP 3: The Selection Process

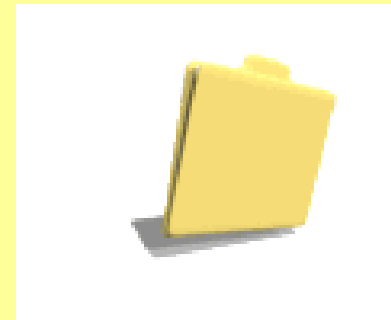
- Make contracts only to **responsible contractors**
- Check GSA website to see if contractor is on the list of debarred/ suspended individuals
 - Excluded Parties List: <https://www.epls.gov/>

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STEP 3: The Selection Process

- **Document! Document! Document!**
- Basis for contractor selection
- Justification for lack of competition
- Basis for award cost or price



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STEP 4: The Contract Negotiation Phase

- Additional contract provisions required in contracts in excess of \$100,000
 - Access to records by the recipient, Agency, Agency OIG, and Comptroller General
 - Remedial actions available to the recipient in event of contractor violation/breach of contract
 - Circumstances justifying termination of contract by the recipient, including the manner of termination and the basis for settlement...
- See 14 CFR § 1260.148



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STEP 4: The Contract Negotiation Phase

...More contract provisions required in contracts in excess of \$100,000

- Contractor's compliance with certain federal laws
 - Clean Air Act and Federal Water Pollution Control Act
 - Byrd Anti-Lobbying Amendment
 - Contract Work Hours and Safety Standards Act, for construction contracts
- Other Requirements
 - Minimum bonding guarantee standards, for construction contracts

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STEP 4: The Contract Negotiation Phase

Outline Contract Provisions

- 2 C.F.R. § 215.48 & Appendix A / 14 C.F.R. § 1260.147
Provide requirements for “all” federally funded contracts but most of the requirements apply to contracts above the simplified acquisition threshold.
- ARRA Requirements
 - 2 C.F.R. 176 published at 74 Fed. Reg. 18449
 - Subpart A—**Reporting and Registration** Requirements under Section 1512 of the Recovery Act
 - Subpart B—**Buy American** Requirement under Section 1605 of the Recovery Act
 - Subpart C—**Wage Rate** Requirements under Section 1606 of the Recovery Act
 - Subpart D—**Single Audit** Information for Recipients of Recovery Act Funds

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STEP 5: The Contract Administration Phase

- 14 C.F.R. § 1260.147 recipients are required to maintain a contract administration system that ensures
 - the contractor's compliance with terms, conditions and specifications of the contract
 - the recipient's monitoring and oversight of the contractor's performance
 - Sufficiently detailed invoices
 - adequate and timely follow-up performance
 - appropriate contract dispute provisions

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STEP 5: The Contract Administration Phase

- Notice and prior approval of the recipient if material change in scope of work/budget
- Monitor Contractor's compliance with certain federal laws
 - Anti-discrimination
 - Federal government's right to patents or inventions
 - Davis-Bacon, if required by authorizing statute
 - Copeland Anti-kickback Act, for construction contracts over \$2000

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STEP 6: Maintain Procurement Records and Files

- 14 C.F.R. § 1260.146
- recipients are required to maintain procurement records and files that include
 - Detailed description of the scope of the contract
 - Justification for entering into the contract, as well as the award selection
 - Cost and price analysis
 - Note: 14 C.F.R. § 1260.146 Imposes this requirement only for purchases over the small acquisition threshold



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STEP 6: Maintain Procurement Records and Files

- Procurement documents, records and files must be available to agency upon request
 - 14 C.F.R. § 1260.144(e)
- Three Year Retention Period from Ending Date of Award Period
- Extended if audit, administrative period, or litigation commences after award period.
 - Maintain for three years after the end of that process
- Real Property and Equipment – Additional Record Keeping Requirements!

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STEP 6: Maintain Procurement Records and Files

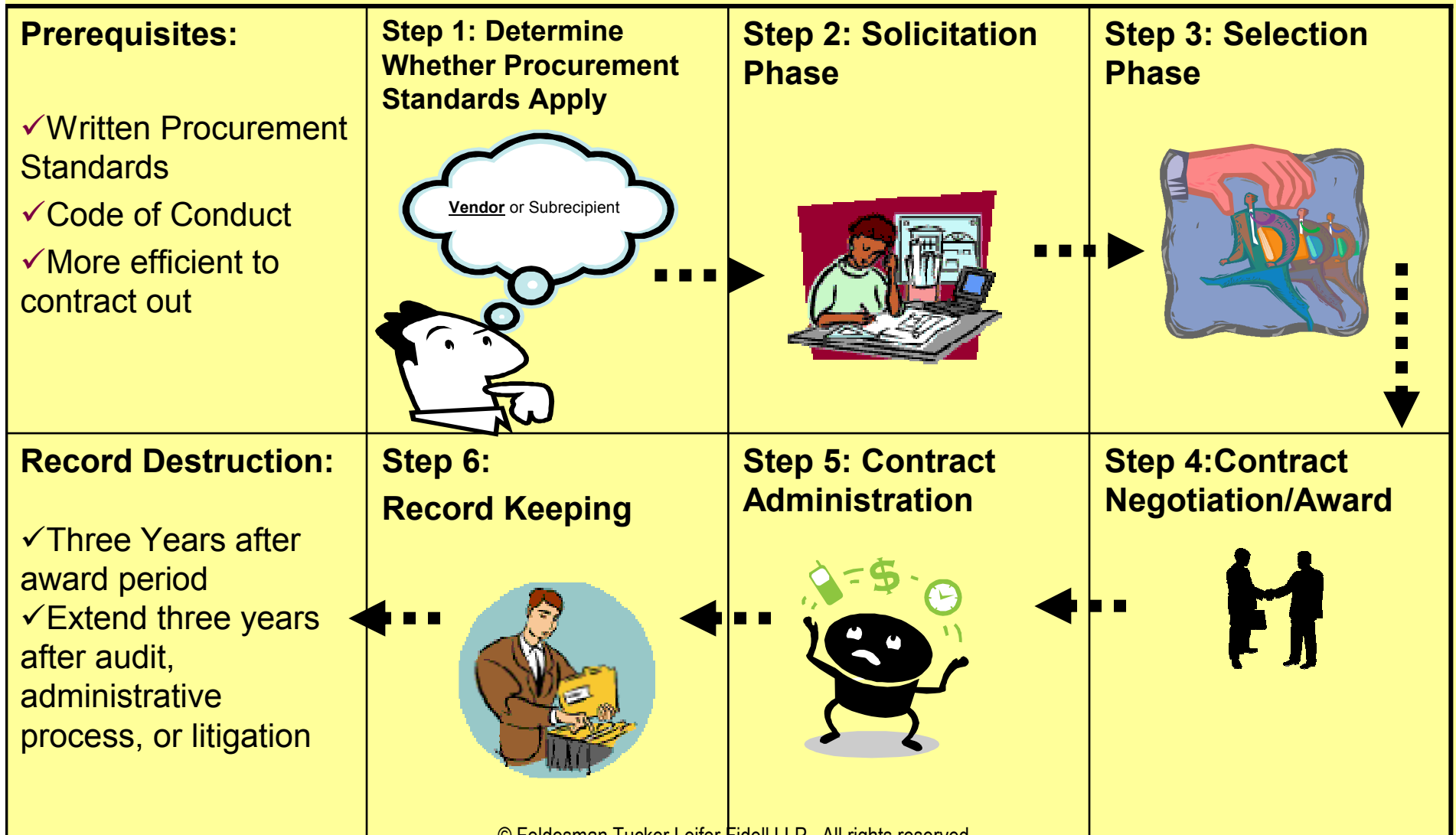
...Why is record-keeping so important?

- Previously GAO Comptroller General reviewed contracting by recipients
- Written procedures
- Competition
- Price evaluation
- Debarment list
- Documentation
- Audit rights of government

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Steps to Successful Procurement



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Subrecipient Monitoring



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Subawards

- **“Subaward** means an award of financial assistance in the form of money, or property in lieu of money, made under an award by a recipient to an eligible subrecipient or by a subrecipient to a lower tier subrecipient. The term includes financial assistance when provided by any legal agreement, even if the agreement is called a contract, but does not include procurement of goods and services nor does it include any form of assistance which is excluded from the definition of "award" of this section.

■ 14 CFR § 1260.102

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Subrecipient Monitoring

- Substantive work under grant
- Budget
- Distinguished from vendor/contractor
- Nature of deliverable
- Flow Down requirements
- Monitoring responsibilities
- Financial reports
- Performance reports
- Audit Reports

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Subrecipient Monitoring

- A-102 (State and Local Gov'ts) and A-110 (Hospitals, Non-Profits, Institutions of Higher Education)
- OMB Circular A-133 § __.400(d) -- Pass-through Entities
- Cost Principles: A-21, A-87, or A-122
 - The set of cost principles which will apply is determined by the nature of the subrecipient

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Subrecipient Monitoring

- **Financial Management Standards**
 - All costs charged to the grant must be allowable, allocable, and reasonable under the applicable cost principles
 - Effective control over accountability for all funds, property and other assets
 - Comparison of outlays with budget amounts
- **Audit Requirements**
 - OMB Circular A-133 annual audit for subrecipients receiving more than \$500,000 in Federal funds
 - Auditors must be given access to records
- **Program Income**
 - Subrecipient program income must be reported

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Subrecipient Monitoring

- Incorporate by Reference all applicable Federal and State laws
 - A-110 (or A-102) and the Cost Principles
- Scope of Work
- Budget
- Site Visits
- Reporting Requirements
- Access to Accounting Records
- Indemnity
 - The recipient is responsible to the Federal government for subrecipient non-compliance

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Subrecipient Monitoring

- **Personnel Records**
 - Time and Effort Certification
 - Make sure an employee who works on multiple projects keeps time according to project
 - Indirect Cost Rate
 - Calculating Fringe Benefits
- **Internal Controls**
 - Adequate control over Federal funds
 - Source Documentation
- **Vendor-Subrecipient Distinction**
 - Substance of the agreement
 - Not what you label it



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Subrecipient Monitoring

- Program Income
 - Program income earned by the subrecipient must be reported
- Non-Federal Share
 - Subrecipients must keep adequate documentation to support matching costs claimed
- Procurement Policies
 - Subrecipients must abide by the procurement standards established in A-110 (or A-102)
- Each subrecipient should have their own procurement policies

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Subrecipient Monitoring

- Marie Detty Youth and Family Services Center, Inc., DAB No. 2024
 - “When a cost is disallowed by the grantor agency, the burden is on the recipient to prove, with appropriate documentation, that the cost is allowable under the cost principles and other relevant program requirements.”
- County of Orange, California, DAB No. 2071
 - OC did not ensure that its subrecipients verified that funds expended only in accordance with grant terms and conditions
 - Subrecipient paid by recipient even though files lacked sufficient documentation to support expenditures in accordance with program objectives

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Subrecipient Monitoring

- American Association of Suicidology, DAB No. 2108
 - Subrecipient of federal funds must show that costs charged to federal awards are reasonable, necessary, allocable, and adequately documented
 - If Board determines that third person is the real party in interest, the subrecipient may represent the recipient
 - Unsigned draft agreements not sufficient
 - Documents must be contemporaneously prepared
 - Conference Calls charged to grant were not supported by minutes or notes of the meetings showing they were grant related.

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Subrecipient Monitoring

- **Contract or Formal Agreement**
 - Attach all applicable Federal laws, regulations, grant terms and conditions, audit requirements
 - Review these requirements with the subrecipient
- **Source Documentation**
 - Document, Document, Document

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Recordkeeping



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Recordkeeping Requirements

- **Financial and Programmatic Records Retention**
 - Financial records, supporting documents, statistical records and all other records pertaining to the grant-supported project should be retained for **3 years** from the date of submission of final report
 - If an audit, litigation, or other action involving the records is started before the end of the appropriate retention period, keep the records until the end of the action

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Recordkeeping Requirements

■ Access

- For as long as records are retained, Agency, the Comptroller General, or any of their duly authorized representatives has the right to
 - Timely and unrestricted access to records, reports, books, documents, and papers pertaining to the grant-supported project, as may be necessary for audit, examination, excerpt, transcription, and copy purposes
 - Timely and reasonable access to the recipient's personnel for the purpose of interview and discussion related to the documents

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Recordkeeping Requirements

- recipients must maintain financial records, supporting documents, statistical records and all other records pertaining to the expenditure of grant funds to purchase real property/equipment for a period of 3 years after the final disposition of the asset

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Recordkeeping Requirements

- recipients must maintain records for equipment acquired or improved with grant funds that –
 - Adequately describe the equipment
 - Identify the equipment by serial, model or other ID number
 - Identify it by source, including award number
 - Note whether title vests in recipient or government
 - Provide the acquisition date and cost
 - Set forth information that can be used to calculate the Federal share

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Recordkeeping Requirements

- Equipment records (cont.)
 - Identify the equipment's location and condition and the reporting date
 - Provide the unit acquisition cost
 - Provide the ultimate disposition data, including date of disposal, sale price, method to determine fair market value
- At least every two years, the recipient must inventory its equipment and reconcile results with prior inventories

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Closeout



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Close out and Disputes – 14 CFR § 1260.171

- After conclusion of grant period, recipient has ninety days to submit financial, performance, and other reports to awarding agency (ninety-day period may be extended upon request)
 - recipient has ninety days after end of grant period to “liquidate” obligations incurred during grant period
 - Excess grant funds go back to the government
- 14 CFR § 1206.77

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Close out and Disputes – 14 CFR § 1260.171

After the Closeout of an award....

- Agency may still disallow costs and recover funds based on later audit or other review
- Recipient is still subject to audit requirements
- Recipient still must meet requirements for property management and record retention

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NASA Specific Close Out Procedures -14 CFR § 1206.77

- “(d) A grant is administratively complete and ready for closeout by NASA when:
 - (1) Property disposition has been completed.
 - (2) The grant officer has obtained from the NASA technical officer certifications that all reports have been received.
 - (3) When administration duties have been delegated to ONR, an electronic notification confirming the completion of all assigned administration duties has been received. Although not required, a DD Form 1594 may be used by ONR in lieu of the electronic notification.
 - (4) Payments have been made for allowable reimbursable costs, and refunds have been received for any balance of unobligated cash advanced that is not authorized to be retained for use on other grants (see § § 1260.171 through 1260.173).”

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The American Recovery and Reinvestment Act of 2009



Multiple Statutory Purposes:

- Create and save jobs
- Jump-start the economy
- Foundation for long-term economic growth
- Modernize the nation's infrastructure
- Expand educational opportunities
- Increase access to health care

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Definitions

- Recipient
 - Any entity, other than an individual, that receives recovery funds directly from the Federal Government through grant, loan, cooperative agreement or contract
 - Includes a State that receives recovery funds
 - **Contractors are “recipients”**
- Recovery Funds
 - Any funds that are made available from appropriations under this Act

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How To Monitor ARRA Implementation

- Recovery.Gov
- Grants.Gov
- FederalSpending.Gov
- Federal Funding Opportunities on agency sites
- Recovery Act Terms and Conditions
 - Special Conditions in supplemental awards
- Recovery Accountability and Transparency Board Actions
- GAO and OMB Reports
- IG Findings

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Competitive New Grant awards under ARRA

■ Competition

- Agencies are expected to follow the same laws, principles, procedures, and practices in awarding discretionary grants with ARRA funds as they do with other funds.
- Agencies should review their internal policies with a goal towards promoting competition to the maximum extent practicable.
- Agencies may consider the appropriateness of limited competitions among existing high-performing projects versus full and open competitions and formula allocations.

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Adding to Existing Grants under ARRA

- Agencies follow administrative requirements as directed in OMB Circulars A-102 and A-110.
- Agencies may obligate funds provided under ARRA on an existing grant, including, but not limited to, a **continuation** or **renewal** grant.
- Because ARRA funds must be tracked and accounted for separately, ***supplements to existing agreements are not recommended as there is a greater risk that the grant recipient will be unable to track and report ARRA funds separately.***

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A Note on Lobbying – OMB Memo 9-24

- Oral communications are prohibited between Federal agency officials and all persons outside the Federal Government (not just federally registered lobbyists) who initiate oral communications pending competitive applications under the Recovery Act.
- Restriction applies in the context and at the stage where concerns about merit-based decision-making are greatest: the period beginning after the submission of formal applications for, and up through awards of, competitive grants or other competitive forms of Federal financial assistance under the Recovery Act.
- Conversations must be documented and put online for public transparency.
 - Disclosure forms may be found here:
http://www.whitehouse.gov/omb/recovery_contact_disclosure_forms/

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New Standard Award Terms

- A **new part 176** has been added to Title 2 of CFR to provide interim final guidance and **standard award terms** for grants, cooperative agreement and loan awards funded with Recovery Act funds needed to implement selected provisions in the Recovery Act:
- Subpart A—**Reporting and Registration** Requirements under Section 1512 of the Recovery Act
- Subpart B—**Buy American** Requirement under Section 1605 of the Recovery Act
- Subpart C—**Wage Rate** Requirements under Section 1606 of the Recovery Act
- Subpart D—**Single Audit** Information for Recipients of Recovery Act Funds

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Buy American – Recovery Act § 1605(a)

- “None of the funds appropriated or otherwise made available by this Act may be used for a project for the **construction, alteration, maintenance, or repair** of a **public building** or **public work** unless **all** of the **iron, steel, and manufactured goods** used in the project are produced in the United States.”
- This provision is **separate** from the Buy American Act – **normally it does not apply to recipients**, but **all recipients of ARRA funds** must comply with this requirement.

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Wage Rate Requirements – ARRA § 1606

- “Notwithstanding any other provision of law and in a manner consistent with other provisions in this Act, **all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to this Act shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality** as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code...”

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Payroll Certification – 29 CFR § 5.5(a)(3)

- Contractor must submit weekly copy of payrolls to the recipient.
- Each payroll must be accompanied by a “Statement of Compliance”
 - “Payroll for the payroll period contains the information required... [and] is correct and complete.”
 - “Each laborer or mechanic ... has been paid the full weekly wages earned...”
 - “Each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits...”
- May be submitted in any form desired, but Optional Form WH-347 satisfies all requirements in one form.
 - <http://www.dol.gov/esa/whd/forms/wh347instr.htm>

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New Whistleblower Protections ARRA § 1553

- “(a) PROHIBITION OF REPRISALS.—An employee of any non-Federal employer receiving covered funds may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing...information that the employee reasonably believes is evidence of—
 - (1) gross mismanagement of an agency contract or grant relating to covered funds;
 - (2) a gross waste of covered funds;
 - (3) a substantial and specific danger to public health or safety related to the implementation or use of covered funds;
 - (4) an abuse of authority related to the implementation or use of covered funds; or
 - (5) a violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) or grant, awarded or issued relating to covered funds.”

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ARRA and the Inspectors General

- \$250 million in additional funding for agency IGs to hire experienced auditors and investigators.
- ARRA provides **new authority** giving IGs
 - access to records and interviews of contractors or recipients, including their employees, subcontractors or subrecipients, and state or local agency administering agreements.
- ARRA mandates that an IG shall **review**, as appropriate, any concerns raised by the public about specific investments of stimulus funds.

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Recovery Accountability and Transparency Board

- “There is established the Recovery Accountability and Transparency Board to coordinate and conduct oversight of covered funds to prevent fraud, waste, and abuse.”
 - ARRA § 1521
- “The Board shall coordinate and conduct oversight of covered funds in order to prevent fraud, waste, and abuse.”
 - ARRA § 1523(a)(1)

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Summary - recipients Need to Report:

- “Total amount of funds received
 - Of that, the total amount spent on projects and activities;
- A list of projects and activities funded by name to include:
 - Description
 - Completion status
 - Estimates on jobs created or retained;
- Details on sub-awards and other payments”
 - OMB Guidance M-09-21, § 2.1
- NSF Recovery Act FAQs:
 - <http://www.nsf.gov/pubs/2009/nsf09038/nsf09038.jsp>
- NASA Recovery Act Page:
 - <http://www.nasa.gov/recovery/>

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Updated Guidance from OMB, M-10-08 (Dec. 18, 2009)

- The Big Changes for Recipients:
 - **Definition of Job Created or Retained**
 - **Quarterly v. Cumulative Job Reporting**
- This memo supersedes all previous *job-related* FAQs and guidance
- Part I of the guidance instructs federal funding agencies to facilitate reporting by providing "key award information" to recipients on their Recovery Act awards.
 - HHS has provided a Recipient Readiness Tool, available at <http://taggs.hhs.gov/ReadinessTool>

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NEW Definitions of Jobs Created or Retained

- A job created – “a **new** position created and filled, or an existing unfilled position that is filled, that is **funded by the Recovery Act.**”
- A job retained – “an **existing** position that is now **funded by the Recovery Act.**”
- A “**funded job**” is defined as “one in which the wages or salaries are either **paid for or will be reimbursed with Recovery Act funding.**”

■ M-10-08, p. 11

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Data Quality – Be Accurate, Complete, and Timely!

- What to Avoid:

- Material Omissions

- “Instances where required data is not reported or reported information is not otherwise responsive to the data requests resulting in significant risk that the public is not fully informed as to the status of a Recovery Act project or activity.”

- Significant Reporting Errors

- “Instances where required data is not reported accurately and such erroneous reporting results in significant risk that the public will be misled or confused by the recipient report in question.”

- OMB M-09-21, Appendix

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Consequences of Faulty Reporting

- “Non-compliant recipients, including those who are persistently late or negligent in their reporting obligations, are subject to Federal action, up to and including the termination of Federal funding or the ability to receive Federal funds in the future.”
 - M-10-05 (Nov. 30, 2009)

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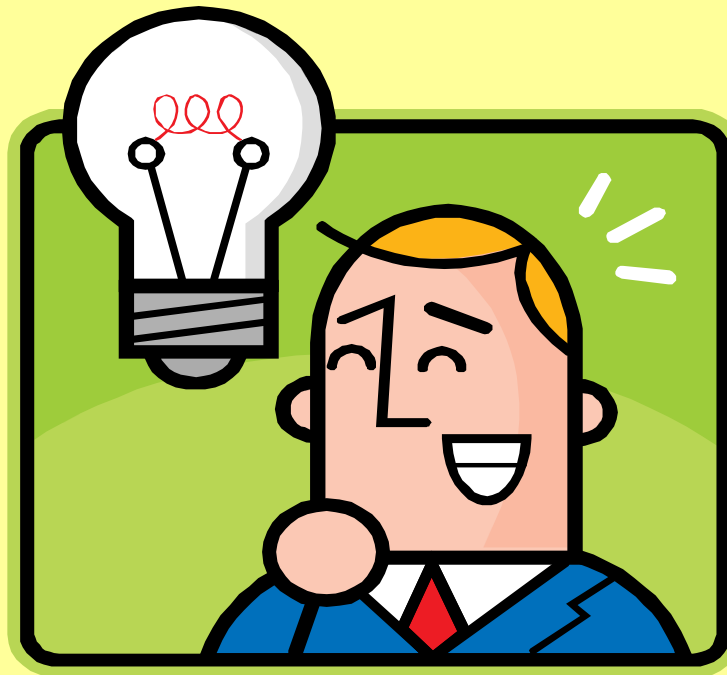
Context and Consequences

- ARRA includes approx. \$250 million in additional funding for agency IGs to hire experienced auditors and investigators.
- Sec. 1514 of ARRA mandates that an IG shall review, as appropriate, any concerns raised by the public about specific investments of stimulus funds.
- ARRA provides new authority giving IGs access to records and interviews of contractors or recipients and subcontractors or subrecipients, and state or local agency administering agreements

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Applying What You've Learned



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Hypothetical # 1

- PPA awarded legal services for 20 years to two law centers without using competitive procedures. PPA's current Executive Director was the founder and former principal officer of one of the law centers. The Executive Director did not terminate her employment with the law center after accepting the Executive Director position at PPA, but took a leave of absence from the law center. PPA awarded contracts to that law center

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Hypothetical # 1 Explanation

- Issues:
 - Procurement and Open Competition
 - Conflict of Interest

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Hypothetical #2

- Gear Up Project did not meet its 50% match requirement of \$990,847 in non-federal contributions. Only secured 1.5% over the first three years of award. Only certain qualifying low-income participants could participate in the program but Gear Up failed to maintain the documentation for all of the program participants.

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Hypothetical # 2 Explanation

- Issues:
 - Cost Matching
 - Project Scope
 - Funds Tracking

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Hypothetical #3

- State Department of Labor commingled funds from its grants with non-DOL grant funds and did not track the funding or the costs separately. During the audited period, \$125,000 was deposited in that account

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Hypothetical #3 Explanation

- Financial Management Standards
- Allocability

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Hypothetical # 4

City receives a grant to renovate a number of vacant properties it owns. As the work progresses, several of the buildings are rented and begin generating program income. City does not have a system in place to track and sequester the funds or to account for expenditures of those funds. During the course of the grant, City keeps time and effort reports, but fails to keep track of total activity for each employee. Finally, City purchased an expensive cooling system with grant funds but has it installed in a building different from the one identified in grant. After more than year, recipient has the cooling system transferred to a building identified in the grant at a cost of approximately \$80,000 (charged to the grant) and also takes depreciation in the amount of \$15,000. If Recipient is audited, what result?

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Hypothetical # 4 Explanation

- Issues:
 - Time and Effort Reporting
 - Program Income
 - Property Management

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Hypothetical # 5

- USD did not notify the NSF program officer that its PI went on vacation for 4 months. Further, it only kept records the total cost of supplies from its vendors, assuming that the vendors would keep track of any relevant, itemized paperwork.

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Hypothetical # 5 Explanation

- Issues:
 - Documentation
 - Change in scope

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Hypothetical # 6

- recipient's single-page budget document was authored by the former project manager for this grant. The recipient estimated the value of a building owned by the recipient and used for the program; estimated electricity and heating oil costs for the building; and estimated of the value of the time of volunteer child welfare specialists who met once monthly to discuss cases of children being served by the grant project.

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Hypothetical # 6 Explanation

- Issues:
 - Valuation of goods and services
 - Documentation of Match

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