

## Side-by-side of 34 CFR Part 74 and 2 CFR Part 200

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| <p><b>§74.1 Purpose.</b></p> <p>(a) This part establishes uniform administrative requirements for Federal grants and agreements awarded to institutions of higher education, hospitals, and other non-profit organizations.</p> <p>(b) The Secretary does not impose additional or inconsistent requirements, except as provided in §§74.4 and 74.14 or unless specifically required by Federal statute or executive order.</p> <p>(c) This part applies to all recipients other than State and local governments and Indian tribal organizations. Uniform requirements for State and local governments and tribal organizations are in 34 CFR Part 80—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.</p> <p>(d) Non-profit organizations that implement Federal programs for the States are also subject to State requirements.</p> | <p><b>§200.100 Purpose.</b></p> <p>(a)(1) This part establishes uniform administrative requirements, cost principles, and audit requirements for Federal awards to non-Federal entities, as described in §200.101 Applicability. Federal awarding agencies must not impose additional or inconsistent requirements, except as provided in §§200.102 Exceptions and 200.210 Information contained in a Federal award, or unless specifically required by Federal statute, regulation, or Executive Order.</p> <p>(2) This part provides the basis for a systematic and periodic collection and uniform submission by Federal agencies of information on all Federal financial assistance programs to the Office of Management and Budget (OMB). It also establishes Federal policies related to the delivery of this information to the public, including through the use of electronic media. It prescribes the manner in which General Services Administration (GSA), OMB, and Federal agencies that administer Federal financial assistance programs are to carry out their statutory responsibilities under the Federal Program Information Act (31 U.S.C. 6101-6106).</p> <p>(b) <i>Administrative requirements.</i> Subparts B through D of this part set forth the uniform administrative requirements for grant and cooperative agreements, including the requirements for Federal awarding agency management of Federal grant programs before the Federal award has been made, and the requirements Federal awarding agencies may impose on non-Federal entities in the Federal award.</p> <p>(c) <i>Cost Principles.</i> Subpart E—Cost Principles of this part establishes principles for determining the allowable costs incurred by non-Federal entities under Federal awards. The principles are for the purpose of cost determination and are not intended to identify the circumstances or dictate the extent of Federal Government participation in the financing of a particular program or project. The principles are designed to provide that Federal awards bear their fair share of cost recognized under these principles except where restricted or prohibited by statute.</p> |

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|  | <p>(d) <i>Single Audit Requirements and Audit Follow-up.</i> Subpart F—Audit Requirements of this part is issued pursuant to the Single Audit Act Amendments of 1996, (31 U.S.C. 7501-7507). It sets forth standards for obtaining consistency and uniformity among Federal agencies for the audit of non-Federal entities expending Federal awards. These provisions also provide the policies and procedures for Federal awarding agencies and pass-through entities when using the results of these audits.</p> <p>(e) For OMB guidance to Federal awarding agencies on Challenges and Prizes, please see M-10-11 Guidance on the Use of Challenges and Prizes to Promote Open Government, issued March 8, 2010, or its successor.</p> <p><b>§200.200 Purpose.</b></p> <p>(a) Sections 200.201 Use of grant agreements (including fixed amount awards), cooperative agreements, and contracts through 200.208 Certifications and representations prescribe instructions and other pre-award matters to be used in the announcement and application process.</p> <p>(b) Use of §§200.203 Notices of funding opportunities, 200.204 Federal awarding agency review of merit of proposals, 200.205 Federal awarding agency review of risk posed by applicants, and 200.207 Specific conditions, is required only for competitive Federal awards, but may also be used by the Federal awarding agency for non-competitive awards where appropriate or where required by Federal statute.</p> |
| <p><b>74.2 Definitions</b> -- See separate side-by-side for definitions that will be posted at a later date..</p>  |   |
| <p><b>§74.3 Effect on other issuances.</b><br/> For awards subject to this part, all administrative requirements of codified program regulations, program manuals, handbooks, and other nonregulatory materials which are inconsistent with the requirements of this part are superseded, except to the extent they are required by statute, or authorized in accordance with the deviations provision in §74.4.</p> | <p><b>§200.105 Effect on other issuances.</b><br/> For Federal awards subject to this part, all administrative requirements, program manuals, handbooks and other non-regulatory materials that are inconsistent with the requirements of this part must be superseded upon implementation of this part by the Federal agency, except to the extent they are required by statute or authorized in accordance with the provisions in §200.102 Exceptions.</p>  |

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| <p><b>§74.4 Deviations.</b></p> <p>The Secretary, after consultation with the Office of Management and Budget (OMB), may grant exceptions for classes of grants or recipients subject to the requirements of this part when exceptions are not prohibited by statute. However, in the interest of maximum uniformity, exceptions from the requirements of this part are permitted only in unusual circumstances. The Secretary may apply more restrictive requirements to a class of recipients when approved by OMB.</p> | <p><b>2 CFR § 3474.5 How exceptions are made to 2 CFR part 200 [by ED].</b></p> <p>(a) With the exception of Subpart F—Audit Requirements of 2 CFR part 200, the Secretary of Education, after consultation with OMB, may allow exceptions for classes of Federal awards or non-Federal entities subject to the requirements of this part when exceptions are not prohibited by statute. However, in the interest of maximum uniformity, exceptions from the requirements of this part will be permitted only in unusual circumstances.</p> <p>(b) Exceptions for classes of Federal awards or non-Federal entities will be published on the OMB Web site at <a href="http://www.whitehouse.gov/omb">www.whitehouse.gov/omb</a>.</p> <p><b>§200.102 Exceptions.</b></p> <p>(a) With the exception of Subpart F—Audit Requirements of this part, OMB may allow exceptions for classes of Federal awards or non-Federal entities subject to the requirements of this part when exceptions are not prohibited by statute. However, in the interest of maximum uniformity, exceptions from the requirements of this part will be permitted only in unusual circumstances. Exceptions for classes of Federal awards or non-Federal entities will be published on the OMB Web site at <a href="http://www.whitehouse.gov/omb">www.whitehouse.gov/omb</a>.</p> <p>(b) Exceptions on a case-by-case basis for individual non-Federal entities may be authorized by the Federal awarding agency or cognizant agency for indirect costs, except where otherwise required by law or where OMB or other approval is expressly required by this part.</p> <p>(c) The Federal awarding agency may apply more restrictive requirements to a class of Federal awards or non-Federal entities when approved by OMB, or when, required by Federal statutes or regulations, except for the requirements in Subpart F—Audit Requirements of this part. A Federal awarding agency may apply less restrictive requirements when making fixed amount awards as defined in Subpart A—Acronyms and Definitions of this part, except for those requirements imposed by statute or in Subpart F—Audit Requirements of this part.</p> <p>(d) On a case-by-case basis, OMB will approve new strategies for Federal awards when proposed by the Federal awarding agency in accordance with OMB</p> |

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| <p>The Secretary may apply less restrictive requirements when awarding small awards, except for those requirements which are statutory. Exceptions on a case-by-case basis may also be made by the Secretary.</p>   | <p>guidance (such as M-13-17) to develop additional evidence relevant to addressing important policy challenges or to promote cost-effectiveness in and across Federal programs. Proposals may draw on the innovative program designs discussed in M-13-17 to expand or improve the use of effective practices in delivering Federal financial assistance while also encouraging innovation in service delivery. Proposals submitted to OMB in accordance with M-13-17 may include requests to waive requirements other than those in Subpart F—Audit Requirements of this part.</p>   |
| <p><b>§74.5 Subawards.</b></p> <p>Unless sections of this part specifically exclude subrecipients from coverage, the provisions of this part shall be applied to subrecipients performing work under awards if the subrecipients are institutions of higher education, hospitals, or other non-profit organizations. State and local government subrecipients are subject to the provisions of 34 CFR Part 80—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.</p> | <p><b>200.330 Subrecipient and contractor determinations.</b></p> <p>The non-Federal entity may concurrently receive Federal awards as a recipient, a subrecipient, and a contractor, depending on the substance of its agreements with Federal awarding agencies and pass-through entities. Therefore, a pass-through entity must make case-by-case determinations whether each agreement it makes for the disbursement of Federal program funds casts the party receiving the funds in the role of a subrecipient or a contractor. The Federal awarding agency may supply and require recipients to comply with additional guidance to support these determinations provided such guidance does not conflict with this section.</p> <p>(a) <i>Subrecipients.</i> A subaward is for the purpose of carrying out a portion of a Federal award and creates a Federal assistance relationship with the subrecipient. See §200.92 Subaward. Characteristics which support the classification of the non-Federal entity as a subrecipient include when the non-Federal entity:</p> <ol style="list-style-type: none"> <li>(1) Determines who is eligible to receive what Federal assistance;</li> <li>(2) Has its performance measured in relation to whether objectives of a Federal program were met;</li> <li>(3) Has responsibility for programmatic decision making;</li> <li>(4) Is responsible for adherence to applicable Federal</li> </ol> |

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|                | <p>program requirements specified in the Federal award;<br/> and<br/> (5) In accordance with its agreement, uses the Federal funds to carry out a program for a public purpose specified in authorizing statute, as opposed to providing goods or services for the benefit of the pass-through entity.</p> <p>(b) <i>Contractors</i>. A contract is for the purpose of obtaining goods and services for the non-Federal entity's own use and creates a procurement relationship with the contractor. See §200.22 Contract. Characteristics indicative of a procurement relationship between the non-Federal entity and a contractor are when the non-Federal entity receiving the Federal funds:</p> <p>(1) Provides the goods and services within normal business operations;<br/> (2) Provides similar goods or services to many different purchasers;<br/> (3) Normally operates in a competitive environment;<br/> (4) Provides goods or services that are ancillary to the operation of the Federal program; and<br/> (5) Is not subject to compliance requirements of the Federal program as a result of the agreement, though similar requirements may apply for other reasons.</p> <p>(c) <i>Use of judgment in making determination</i>. In determining whether an agreement between a pass-through entity and another non-Federal entity casts the latter as a subrecipient or a contractor, the substance of the relationship is more important than the form of the agreement. All of the characteristics listed above may not be present in all cases, and the pass-through entity must use judgment in classifying each agreement as a subaward or a procurement contract.</p> <p><b>§200.331 Requirements for pass-through entities.</b><br/> All pass-through entities must:</p> <p>(a) Ensure that every subaward is clearly identified to the subrecipient as a subaward and includes the following information at the time of the subaward and if any of these data elements change, include the changes in subsequent subaward modification. When some of this information is not available, the pass-through entity must provide the best information available to describe the Federal award and subaward. Required information includes:</p> |

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|                | <p>(1) Federal Award Identification.</p> <p>(i) Subrecipient name (which must match the name associated with its unique entity identifier);</p> <p>(ii) Subrecipient's unique entity identifier;</p> <p>(iii) Federal Award Identification Number (FAIN);</p> <p>(iv) Federal Award Date (see §200.39 Federal award date);</p> <p>(v) Subaward Period of Performance Start and End Date;</p> <p>(vi) Amount of Federal Funds Obligated by this action;</p> <p>(vii) Total Amount of Federal Funds Obligated to the subrecipient;</p> <p>(viii) Total Amount of the Federal Award;</p> <p>(ix) Federal award project description, as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA);</p> <p>(x) Name of Federal awarding agency, pass-through entity, and contact information for awarding official,</p> <p>(xi) CFDA Number and Name; the pass-through entity must identify the dollar amount made available under each Federal award and the CFDA number at time of disbursement;</p> <p>(xii) Identification of whether the award is R&amp;D; and</p> <p>(xiii) Indirect cost rate for the Federal award (including if the de minimis rate is charged per §200.414 Indirect (F&amp;A) costs).</p> <p>(2) All requirements imposed by the pass-through entity on the subrecipient so that the Federal award is used in accordance with Federal statutes, regulations and the terms and conditions of the Federal award.</p> <p>(3) Any additional requirements that the pass-through entity imposes on the subrecipient in order for the pass-through entity to meet its own responsibility to the Federal awarding agency including identification of any required financial and performance reports;</p> <p>(4) An approved federally recognized indirect cost rate negotiated between the subrecipient and the Federal Government or, if no such rate exists, either a rate negotiated between the pass-through entity and the subrecipient (in compliance with this part), or a de minimis indirect cost rate as defined in §200.414 Indirect (F&amp;A) costs, paragraph (f) of this part.</p> <p>(5) A requirement that the subrecipient permit the pass-through entity and auditors to have access to the subrecipient's records and financial statements as necessary for the pass-through entity to meet the requirements of this part; and</p> |

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|                | <p>(6) Appropriate terms and conditions concerning closeout of the subaward.</p> <p>(b) Evaluate each subrecipient's risk of noncompliance with Federal statutes, regulations, and the terms and conditions of the subaward for purposes of determining the appropriate subrecipient monitoring described in paragraphs (d) and (e) of this section, which may include consideration of such factors as:</p> <p>(1) The subrecipient's prior experience with the same or similar subawards;</p> <p>(2) The results of previous audits including whether or not the subrecipient receives a Single Audit in accordance with Subpart F—Audit Requirements of this part, and the extent to which the same or similar subaward has been audited as a major program;</p> <p>(3) Whether the subrecipient has new personnel or new or substantially changed systems; and</p> <p>(4) The extent and results of Federal awarding agency monitoring (e.g., if the subrecipient also receives Federal awards directly from a Federal awarding agency).</p> <p>(c) Consider imposing specific subaward conditions upon a subrecipient if appropriate as described in §200.207 Specific conditions.</p> <p>(d) Monitor the activities of the subrecipient as necessary to ensure that the subaward is used for authorized purposes, in compliance with Federal statutes, regulations, and the terms and conditions of the subaward; and that subaward performance goals are achieved. Pass-through entity monitoring of the subrecipient must include:</p> <p>(1) Reviewing financial and performance reports required by the pass-through entity.</p> <p>(2) Following-up and ensuring that the subrecipient takes timely and appropriate action on all deficiencies pertaining to the Federal award provided to the subrecipient from the pass-through entity detected through audits, on-site reviews, and other means.</p> <p>(3) Issuing a management decision for audit findings pertaining to the Federal award provided to the subrecipient from the pass-through entity as required by §200.521 Management decision.</p> <p>(e) Depending upon the pass-through entity's assessment of risk posed by the subrecipient (as described in paragraph (b) of this section), the following monitoring tools may be useful for the pass-through</p> |

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|   | <p>entity to ensure proper accountability and compliance with program requirements and achievement of performance goals:</p> <p>(1) Providing subrecipients with training and technical assistance on program-related matters; and</p> <p>(2) Performing on-site reviews of the subrecipient's program operations;</p> <p>(3) Arranging for agreed-upon-procedures engagements as described in §200.425 Audit services.</p> <p>(f) Verify that every subrecipient is audited as required by Subpart F—Audit Requirements of this part when it is expected that the subrecipient's Federal awards expended during the respective fiscal year equaled or exceeded the threshold set forth in §200.501 Audit requirements.</p> <p>(g) Consider whether the results of the subrecipient's audits, on-site reviews, or other monitoring indicate conditions that necessitate adjustments to the pass-through entity's own records.</p> <p>(h) Consider taking enforcement action against noncompliant subrecipients as described in §200.338 Remedies for noncompliance of this part and in program regulations.</p> <p><b>§200.332 Fixed amount subawards.</b><br/> With prior written approval from the Federal awarding agency, a pass-through entity may provide subawards based on fixed amounts up to the Simplified Acquisition Threshold, provided that the subawards meet the requirements for fixed amount awards in §200.201 Use of grant agreements (including fixed amount awards), cooperative agreements, and contracts.</p> |
| <p><b>§74.10 Purpose.</b><br/> Sections 74.11 through 74.17 prescribes forms and instructions and other pre-award matters to be used in applying for awards.</p>  |  |
| <p><b>§74.11 Pre-award policies.</b></p> <p>(a) <i>Use of grants and cooperative agreements, and contracts.</i> In each instance, the Secretary decides on the appropriate award instrument (i.e., grant, cooperative agreement, or contract). The Federal Grant and Cooperative Agreement Act (31 U.S.C. 6301-08) governs the use of grants,</p> | <p><b>§200.201 Use of grant agreements (including fixed amount awards), cooperative agreements, and contracts.</b></p> <p>(a) The Federal awarding agency or pass-through entity must decide on the appropriate instrument for the Federal award (i.e., grant agreement, cooperative agreement, or contract) in accordance with the Federal Grant and Cooperative Agreement Act (31 U.S.C. 6301-08).</p>   |



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| <p>cooperative agreements, and contracts. A grant or cooperative agreement shall be used only when the principal purpose of a transaction is to accomplish a public purpose of support or stimulation authorized by Federal statute. The statutory criterion for choosing between grants and cooperative agreements is that for the latter, substantial involvement is expected between ED and the recipient when carrying out the activity contemplated in the agreement. Contracts shall be used when the principal purpose is acquisition of property or services for the direct benefit or use of the Federal Government.</p> <p>(b) <i>Public notice and priority setting.</i> The Secretary notifies the public of intended funding priorities for discretionary grant programs, unless funding priorities are established by Federal statute.</p> | <p>(b) Fixed Amount Awards. In addition to the options described in paragraph (a) of this section, Federal awarding agencies, or pass-through entities as permitted in §200.332 Fixed amount subawards, may use fixed amount awards (see §200.45 Fixed amount awards) to which the following conditions apply:</p> <p>(1) The Federal award amount is negotiated using the cost principles (or other pricing information) as a guide. The Federal awarding agency or pass-through entity may use fixed amount awards if the project scope is specific and if adequate cost, historical, or unit pricing data is available to establish a fixed amount award based on a reasonable estimate of actual cost. Payments are based on meeting specific requirements of the Federal award. Accountability is based on performance and results. Except in the case of termination before completion of the Federal award, there is no governmental review of the actual costs incurred by the non-Federal entity in performance of the award. Some of the ways in which the Federal award may be paid include, but are not limited to:</p> <p>(i) In several partial payments, the amount of each agreed upon in advance, and the “milestone” or event triggering the payment also agreed upon in advance, and set forth in the Federal award;</p> <p>(ii) On a unit price basis, for a defined unit or units, at a defined price or prices, agreed to in advance of performance of the Federal award and set forth in the Federal award; or,</p> <p>(iii) In one payment at Federal award completion.</p> <p>(2) A fixed amount award cannot be used in programs which require mandatory cost sharing or match.</p> <p>(3) The non-Federal entity must certify in writing to the Federal awarding agency or pass-through entity at the end of the Federal award that the project or activity was</p> |

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| <p>[C. Ref 34 CFR 75.100, 75.101 Re: Application notices]</p> | <p>completed or the level of effort was expended. If the required level of activity or effort was not carried out, the amount of the Federal award must be adjusted.</p> <p>(4) Periodic reports may be established for each Federal award.</p> <p>(5) Changes in principal investigator, project leader, project partner, or scope of effort must receive the prior written approval of the Federal awarding agency or pass-through entity.</p> <p><b>§200.202 Requirement to provide public notice of Federal financial assistance programs.</b></p> <p>(a) The Federal awarding agency must notify the public of Federal programs in the Catalog of Federal Domestic Assistance (CFDA), maintained by the General Services Administration (GSA).</p> <p>(1) The CFDA, or any OMB-designated replacement, is the single, authoritative, governmentwide comprehensive source of Federal financial assistance program information produced by the executive branch of the Federal government.</p> <p>(2) The information that the Federal awarding agency must submit to GSA for approval by OMB is listed in paragraph (b) of this section. GSA must prescribe the format for the submission.</p> <p>(3) The Federal awarding agency may not award Federal financial assistance without assigning it to a program that has been included in the CFDA as required in this section unless there are exigent circumstances requiring otherwise, such as timing requirements imposed by statute.</p> <p>(b) [This paragraph specifies the information that Federal agencies must provide GSA for description of each program in the CFDA.]</p> |
|   | <p><b>§200.203 Notices of funding opportunities.</b></p> <p>For competitive grants and cooperative agreements, the Federal awarding agency must announce specific funding opportunities by providing the following information in a public notice:</p> <p>(a) <i>Summary Information in Notices of Funding Opportunities.</i> The Federal awarding agency must</p>  |

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|                | <p>display the following information posted on the OMB-designated governmentwide Web site for finding and applying for Federal financial assistance, in a location preceding the full text of the announcement:</p> <ul style="list-style-type: none"> <li>(1) Federal Awarding Agency Name;</li> <li>(2) Funding Opportunity Title;</li> <li>(3) Announcement Type (whether the funding opportunity is the initial announcement of this funding opportunity or a modification of a previously announced opportunity);</li> <li>(4) Funding Opportunity Number (required, if applicable). If the Federal awarding agency has assigned or will assign a number to the funding opportunity announcement, this number must be provided;</li> <li>(5) Catalog of Federal Financial Assistance (CFDA) Number(s);</li> <li>(6) Key Dates. Key dates include due dates for applications or Executive Order 12372 submissions, as well as for any letters of intent or pre-applications. For any announcement issued before a program's application materials are available, key dates also include the date on which those materials will be released; and any other additional information, as deemed applicable by the relevant Federal awarding agency.</li> </ul> <p>(b) The Federal awarding agency must generally make all funding opportunities available for application for at least 60 calendar days. The Federal awarding agency may make a determination to have a less than 60 calendar day availability period but no funding opportunity should be available for less than 30 calendar days unless exigent circumstances require as determined by the Federal awarding agency head or delegate.</p> <p>(c) <i>Full Text of Funding Opportunities.</i> The Federal awarding agency must include the following information in the full text of each funding opportunity. For specific instructions on the content required in this section, refer to Appendix I to Part 200—Full Text of Notice of Funding Opportunity to this part.</p> <ul style="list-style-type: none"> <li>(1) Full programmatic description of the funding opportunity.</li> <li>(2) Federal award information, including sufficient information to help an applicant make an informed decision about whether to submit an application. (See also §200.414 Indirect (F&amp;A) costs, paragraph (c)(4)).</li> </ul> |

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| [C. Ref 34 CFR 75.200-75.225 Re selection procedures for discretionary grants] | <p>(3) Specific eligibility information, including any factors or priorities that affect an applicant's or its application's eligibility for selection.</p> <p>(4) Application Preparation and Submission Information, including the applicable submission dates and time.</p> <p>(5) Application Review Information including the criteria and process to be used to evaluate applications. See also §§200.204 Federal awarding agency review of merit proposals and 200.205 Federal awarding agency review of risk posed by applicants. See also 2 CFR part 27 (forthcoming at time of publication).</p> <p>(6) Federal Award Administration Information. See also §200.210 Information contained in a Federal award.</p> <p><b>200.204 Federal awarding agency review of merit of proposals.</b><br/>For competitive grants or cooperative agreements, unless prohibited by Federal statute, the Federal awarding agency must design and execute a merit review process for applications. This process must be described or incorporated by reference in the applicable funding opportunity (see Appendix I to this part, Full text of the Funding Opportunity.) See also §200.203 Notices of funding opportunities.</p> <p><b>§200.205 Federal awarding agency review of risk posed by applicants.</b><br/>(a) Prior to making a Federal award, the Federal awarding agency is required by 31 U.S.C. 3321 and 41 U.S.C. 2313 note to review information available through any OMB-designated repositories of governmentwide eligibility qualification or financial integrity information, such as SAM Exclusions and "Do Not Pay". See also suspension and debarment requirements at 2 CFR part 180 as well as individual Federal agency suspension and debarment regulations in title 2 of the Code of Federal Regulations.<br/>(b) In addition, for competitive grants or cooperative agreements, the Federal awarding agency must have in place a framework for evaluating the risks posed by applicants before they receive Federal awards. This evaluation may incorporate results of the evaluation of the applicant's eligibility or the quality of its application. If the Federal awarding agency determines that a Federal award will be made, special conditions that correspond to the degree of risk assessed may be</p> |
| [C. Ref §74.13 Debarment and suspension]                                       |   |
| [C. Ref. §74.14 Special award conditions]                                      |   |

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| <p>[C. Ref. 34 CFR 75.235]</p> | <p>applied to the Federal award. Criteria to be evaluated must be described in the announcement of funding opportunity described in §200.203 Notices of funding opportunities.</p> <p>(c) In evaluating risks posed by applicants, the Federal awarding agency may use a risk-based approach and may consider any items such as the following:</p> <ul style="list-style-type: none"> <li>(1) Financial stability;</li> <li>(2) Quality of management systems and ability to meet the management standards prescribed in this part;</li> <li>(3) History of performance. The applicant's record in managing Federal awards, if it is a prior recipient of Federal awards, including timeliness of compliance with applicable reporting requirements, conformance to the terms and conditions of previous Federal awards, and if applicable, the extent to which any previously awarded amounts will be expended prior to future awards;</li> <li>(4) Reports and findings from audits performed under Subpart F—Audit Requirements of this part or the reports and findings of any other available audits; and</li> <li>(5) The applicant's ability to effectively implement statutory, regulatory, or other requirements imposed on non-Federal entities.</li> </ul> <p>(d) In addition to this review, the Federal awarding agency must comply with the guidelines on governmentwide suspension and debarment in 2 CFR part 180, and must require non-Federal entities to comply with these provisions. These provisions restrict Federal awards, subawards and contracts with certain parties that are debarred, suspended or otherwise excluded from or ineligible for participation in Federal programs or activities.</p> <p><b>§200.210 Information contained in a Federal award.</b><br/> A Federal award must include the following information:</p> <p>(a) <i>General Federal Award Information.</i> The Federal awarding agency must include the following general Federal award information in each Federal award:</p> <ul style="list-style-type: none"> <li>(1) Recipient name (which must match the name associated with its unique entity identifier as defined at 2 CFR 25.315);</li> <li>(2) Recipient's unique entity identifier;</li> <li>(3) Unique Federal Award Identification Number (FAIN);</li> <li>(4) Federal Award Date (see §200.39 Federal award date);</li> </ul> |

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|                | <p>(5) Period of Performance Start and End Date;</p> <p>(6) Amount of Federal Funds Obligated by this action;</p> <p>(7) Total Amount of Federal Funds Obligated;</p> <p>(8) Total Amount of the Federal Award;</p> <p>(9) Budget Approved by the Federal Awarding Agency;</p> <p>(10) Total Approved Cost Sharing or Matching, where applicable;</p> <p>(11) Federal award project description, (to comply with statutory requirements (e.g., FFATA));</p> <p>(12) Name of Federal awarding agency and contact information for awarding official,</p> <p>(13) CFDA Number and Name;</p> <p>(14) Identification of whether the award is R&amp;D; and</p> <p>(15) Indirect cost rate for the Federal award (including if the de minimis rate is charged per §200.414 Indirect (F&amp;A) costs).</p> <p>(b) <i>General Terms and Conditions</i> (1) Federal awarding agencies must incorporate the following general terms and conditions either in the Federal award or by reference, as applicable:</p> <p>(i) Administrative requirements implemented by the Federal awarding agency as specified in this part.</p> <p>(ii) National policy requirements. These include statutory, executive order, other Presidential directive, or regulatory requirements that apply by specific reference and are not program-specific. See §200.300 Statutory and national policy requirements.</p> <p>(2) The Federal award must include wording to incorporate, by reference, the applicable set of general terms and conditions. The reference must be to the Web site at which the Federal awarding agency maintains the general terms and conditions.</p> <p>(3) If a non-Federal entity requests a copy of the full text of the general terms and conditions, the Federal awarding agency must provide it.</p> <p>(4) Wherever the general terms and conditions are publicly available, the Federal awarding agency must maintain an archive of previous versions of the general terms and conditions, with effective dates, for use by the non-Federal entity, auditors, or others.</p> <p>(c) <i>Federal Awarding Agency, Program, or Federal Award Specific Terms and Conditions.</i> The Federal awarding agency may include with each Federal award any terms and conditions necessary to communicate requirements that are in addition to the requirements outlined in the Federal awarding agency's general terms</p> |

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|   | <p>and conditions. Whenever practicable, these specific terms and conditions also should be shared on a public Web site and in notices of funding opportunities (as outlined in §200.203 Notices of funding opportunities) in addition to being included in a Federal award. See also §200.206 Standard application requirements.</p> <p>(d) <i>Federal Award Performance Goals.</i> The Federal awarding agency must include in the Federal award an indication of the timing and scope of expected performance by the non-Federal entity as related to the outcomes intended to be achieved by the program. In some instances (e.g., discretionary research awards), this may be limited to the requirement to submit technical performance reports (to be evaluated in accordance with Federal awarding agency policy). Where appropriate, the Federal award may include specific performance goals, indicators, milestones, or expected outcomes (such as outputs, or services performed or public impacts of any of these) with an expected timeline for accomplishment. Reporting requirements must be clearly articulated such that, where appropriate, performance during the execution of the Federal award has a standard against which non-Federal entity performance can be measured. The Federal awarding agency may include program-specific requirements, as applicable. These requirements should be aligned with agency strategic goals, strategic objectives or performance goals that are relevant to the program. See also OMB Circular A-11, Preparation, Submission and Execution of the Budget Part 6 for definitions of strategic objectives and performance goals.</p> |
| <p><b>§74.12 Forms for applying for Federal assistance.</b></p> <p>(a) The Secretary complies with the applicable report clearance requirements of 5 CFR Part 1320—Controlling Paperwork Burdens on the Public—with regard to all forms used by ED in place of or as a supplement to the Standard Form 424 (SF-424) series.</p> | <p><b>§200.206 Standard application requirements.</b></p> <p>(a) Paperwork clearances. The Federal awarding agency may only use application information collections approved by OMB under the Paperwork Reduction Act of 1995 and OMB's implementing regulations in 5 CFR part 1320, Controlling Paperwork Burdens on the Public. Consistent with these requirements, OMB will authorize additional information collections only on a limited basis.</p> <p>(b) If applicable, the Federal awarding agency may inform applicants and recipients that they do not need to provide certain information otherwise required by the relevant information collection.</p>   |

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| <p>(b) Applicants shall use the SF-424 series or those forms and instructions prescribed by the Secretary.</p> <p>(c) For Federal programs covered by E.O. 12372—Intergovernmental Review of Federal Programs (implemented by the Secretary in 34 CFR Part 79—Intergovernmental Review of Department of Education Programs and Activities)—the applicant shall complete the appropriate sections of the SF-424 (Application for Federal Assistance) indicating whether the application was subject to review by the State Single Point of Contact (SPOC). The name and address of the SPOC for a particular State can be obtained from the Secretary or the <i>Catalog of Federal Domestic Assistance</i> (available from the Superintendent of Documents, Government Printing Office). The SPOC shall advise the applicant whether the program for which application is made has been selected by that State for review.</p> <p>(d) If ED does not use the SF-424 form, the Secretary may indicate whether the application is subject to review by the State under E.O. 12372.</p> |                                      |
| <p><b>§74.13 Debarment and suspension.</b><br/>The Secretary and recipients shall comply with the nonprocurement debarment and suspension common rule (implemented by the Secretary in 34 CFR part 85). This common rule restricts subawards and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs or activities.<br/><b>[C. Ref 2 CFR parts 180 and 3485]</b></p>   | <p><b>[C. Ref 2 CFR 200.205]</b></p> |



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| <p><b>§74.14 Special award conditions.</b></p> <p>(a) The Secretary may impose special award conditions, if an applicant or recipient—</p> <ol style="list-style-type: none"> <li>(1) Has a history of poor performance;</li> <li>(2) Is not financially stable;</li> <li>(3) Has a management system that does not meet the standards prescribed in this part;</li> <li>(4) Has not conformed to the terms and conditions of a previous award; or</li> <li>(5) Is not otherwise responsible.</li> </ol> <p>(b) If special award conditions are established under paragraph (a) of this section, the Secretary notifies the applicant or recipient of—</p> <ol style="list-style-type: none"> <li>(1) The nature of the additional requirements;</li> <li>(2) The reason why the additional requirements are being imposed;</li> <li>(3) The nature of the corrective action</li> </ol> | <p><b>2 CFR §3474.10 Clarification regarding 2 CFR 200.207.<sup>2</sup></b></p> <p><sup>2</sup>C. Ref. 2 CFR 200.205, 200.207.</p> <p>The Secretary or a pass-through entity may, in appropriate circumstances, designate the specific conditions established under 2 CFR 200.207 as “high-risk conditions” and designate a non-Federal entity subject to specific conditions established under §200.207 as “high-risk”.</p> <p><b>§200.207 Specific conditions.</b></p> <p>(a) The Federal awarding agency or pass-through entity may impose additional specific award conditions as needed, in accordance with paragraphs (b) and (c) of this section, under the following circumstances:</p> <ol style="list-style-type: none"> <li>(1) Based on the criteria set forth in §200.205 Federal awarding agency review of risk posed by applicants;</li> <li>(2) When an applicant or recipient has a history of failure to comply with the general or specific terms and conditions of a Federal award;</li> <li>(3) When an applicant or recipient fails to meet expected performance goals as described in §200.210 Information contained in a Federal award; or</li> <li>(4) When an applicant or recipient is not otherwise responsible.</li> </ol> <p>(b) These additional Federal award conditions may include items such as the following:</p> <ol style="list-style-type: none"> <li>(1) Requiring payments as reimbursements rather than advance payments;</li> <li>(2) Withholding authority to proceed to the next phase until receipt of evidence of acceptable performance within a given period of performance;</li> <li>(3) Requiring additional, more detailed financial reports;</li> <li>(4) Requiring additional project monitoring;</li> <li>(5) Requiring the non-Federal entity to obtain technical or management assistance; or</li> <li>(6) Establishing additional prior approvals.</li> </ol> <p>(c) The Federal awarding agency or pass-through entity must notify the applicant or non-Federal entity as to:</p> <ol style="list-style-type: none"> <li>(1) The nature of the additional requirements;</li> <li>(2) The reason why the additional requirements are being imposed;</li> <li>(3) The nature of the action needed to remove the additional requirement, if applicable;</li> <li>(4) The time allowed for completing the actions if applicable, and</li> </ol> |

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| <p>needed;</p> <p>(4) The time allowed for completing the corrective actions; and</p> <p>(5) The method for requesting reconsideration of the additional requirements imposed.</p> <p>(c) Any special conditions are promptly removed once the conditions that prompted them have been corrected.</p>  | <p>(5) The method for requesting reconsideration of the additional requirements imposed.</p> <p>(d) Any specific conditions must be promptly removed once the conditions that prompted them have been corrected.</p> |
| <p><b>§74.15 Metric system of measurement.</b></p> <p>The Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act (15 U.S.C. 205) declares that the metric system is the preferred measurement system for U.S. trade and commerce. The Act requires each Federal agency to establish a date or dates in consultation with the Secretary of Commerce, when the metric system of measurement will be used in the agency's procurements, grants, and other business-related activities. Metric implementation may take longer where the use of the system is initially impractical or likely to cause significant inefficiencies in the accomplishment of federally-funded activities. The Secretary follows the provisions of E.O. 12770—Metric Usage in Federal Government Programs.</p> |  |

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| <p><b>§74.16 Resource Conservation and Recovery Act.</b><br/>Under the Resource Conservation and Recovery Act (RCRA) (Pub. L. 94-580 codified at 42 U.S.C. 6962), any State agency or agency of a political subdivision of a State which is using appropriated Federal funds must comply with section 6002 of the RCRA. Section 6002 requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by the Environmental Protection Agency (EPA) (40 CFR parts 247-254). Accordingly, recipients that receive direct Federal awards or other Federal funds shall give preference in their procurement programs funded with Federal funds to the purchase of recycled products pursuant to the EPA guidelines.</p> |   |
| <p><b>§74.17 Certifications and representations.</b><br/>Unless prohibited by statute or codified regulation, the Secretary allows recipients to submit certifications and representations required by statute, executive order, or regulation on an annual basis, if the recipients have ongoing and continuing relationships with ED. Annual certifications and representations shall be signed by responsible officials with the authority to ensure recipients' compliance with the pertinent requirements.</p>  | <p><b>§200.208 Certifications and representations.</b><br/>Unless prohibited by Federal statutes or regulations, each Federal awarding agency or pass-through entity is authorized to require the non-Federal entity to submit certifications and representations required by Federal statutes, or regulations on an annual basis. Submission may be required more frequently if the non-Federal entity fails to meet a requirement of a Federal award.</p> <p><b>[C. Ref: 2 CFR 200.415 Required certifications]</b></p>   |
|  | <p><b>§200.211 Public access to Federal award information.</b><br/>(a) In accordance with statutory requirements for Federal spending transparency (e.g., FFATA), except as noted in this section, for applicable Federal awards the Federal awarding agency must announce all Federal awards publicly and publish the required information on a publicly available OMB-designated governmentwide Web site (at time of publication, <a href="http://www.USAspending.gov">www.USAspending.gov</a>).<br/>(b) Nothing in this section may be construed as requiring the publication of information otherwise exempt under the Freedom of Information Act (5 U.S.C 552), or controlled unclassified information pursuant to</p> |

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|  | Executive Order 13556.  |
| <p><b>§74.20 Purpose of financial and program management.</b><br/> Sections 74.21 through 74.28 prescribe standards for financial management systems, methods for making payments and rules for—</p> <ul style="list-style-type: none"> <li>(a) Satisfying cost sharing and matching requirements;</li> <li>(b) Accounting for program income;</li> <li>(c) Approving budget revisions;</li> <li>(d) Making audits;</li> <li>(e) Determining allowability of cost; and</li> <li>(f) Establishing fund availability.</li> </ul> |   |
| <p><b>§74.21 Standards for financial management systems.</b><br/> (a) Recipients shall relate financial data to performance data and develop unit cost information whenever practical.</p> <p>(b) Recipients' financial management</p>   | <p><b>§200.302 Financial management.</b></p> <p>(a) Each state must expend and account for the Federal award in accordance with state laws and procedures for expending and accounting for the state's own funds. In addition, the state's and the other non-Federal entity's financial management systems, including records documenting compliance with Federal statutes, regulations, and the terms and conditions of the Federal award, must be sufficient to permit the preparation of reports required by general and program-specific terms and conditions; and the tracing of funds to a level of expenditures adequate to establish that such funds have been used according to the Federal statutes, regulations, and the terms and conditions of the Federal award. See also §200.450 Lobbying.</p> <p>(b) The financial management system of each non-Federal entity must provide for the following (see also §§200.333 Retention requirements for records, 200.334 Requests for transfer of records, 200.335 Methods for collection, transmission and storage of information, 200.336 Access to records, and 200.337 Restrictions on public access to records):</p> <ul style="list-style-type: none"> <li>(1) Identification, in its accounts, of all Federal awards received and expended and the Federal programs under which they were received. Federal program and Federal award identification must include, as applicable, the CFDA title and number, Federal award identification number and year, name of the Federal agency, and</li> </ul> |

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| <p>systems shall provide for the following:</p> <p>(1) Accurate, current, and complete disclosure of the financial results of each federally-sponsored project in accordance with the reporting requirements established in §74.52. If the Secretary 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 accrual data for its reports on the basis of an analysis of the documentation on hand.</p> <p>(2) Records that identify adequately the source and application of funds for federally-sponsored activities. These records shall contain information pertaining to awards, authorizations, obligations, unobligated balances, assets, outlays, income, and interest.</p> <p>(3) Effective control over and accountability for all funds, property, and other assets. Recipients shall adequately safeguard all assets and assure they are used solely for authorized purposes.</p> <p>(4) Comparison of outlays with budget amounts for each award. Whenever appropriate, financial information should be related to performance and unit cost data.</p> <p>(5) Written procedures to minimize the time</p> | <p>name of the pass-through entity, if any.</p> <p>(2) Accurate, current, and complete disclosure of the financial results of each Federal award or program in accordance with the reporting requirements set forth in §§200.327 Financial reporting and 200.328 Monitoring and reporting program performance. If a Federal awarding agency requires reporting on an accrual basis from a recipient that maintains its records on other than an accrual basis, the recipient must not be required to establish an accrual accounting system. This recipient may develop accrual data for its reports on the basis of an analysis of the documentation on hand. Similarly, a pass-through entity must not require a subrecipient to establish an accrual accounting system and must allow the subrecipient to develop accrual data for its reports on the basis of an analysis of the documentation on hand.</p> <p>(3) Records that identify adequately the source and application of funds for federally-funded activities. These records must contain information pertaining to Federal awards, authorizations, obligations, unobligated balances, assets, expenditures, income and interest and be supported by source documentation.</p> <p>(4) Effective control over, and accountability for, all funds, property, and other assets. The non-Federal entity must adequately safeguard all assets and assure that they are used solely for authorized purposes. See §200.303 Internal controls.</p> <p>(5) Comparison of expenditures with budget amounts for each Federal award.</p> <p>(6) Written procedures to implement the requirements of §200.305 Payment.</p> |

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| <p>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 Cash Management Improvement Act (CMIA) (Pub. L. 101-453) 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.</p> <p>(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.</p> <p>(7) Accounting records including cost accounting records that are supported by source documentation.</p> <p>(c) Where the Federal Government guarantees or insures the repayment of money borrowed by the recipient, the Secretary may require adequate bonding and insurance if the bonding and insurance requirements of the recipient are not deemed adequate to protect the interest of the Federal Government.</p> <p>(d) The Secretary may require adequate fidelity bond coverage where the recipient lacks sufficient coverage to protect the Federal Government's interest.</p> | <p>(7) Written procedures for determining the allowability of costs in accordance with Subpart E—Cost Principles of this part and the terms and conditions of the Federal award.</p><br><br><br><br><br><br><br><br><br><br><p><b>§200.303 Internal controls.</b><br/>The non-Federal entity must:</p> <p>(a) Establish and maintain effective internal control over the Federal award that provides reasonable assurance that the non-Federal entity is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award. These internal controls should be in compliance with guidance in “Standards for Internal Control in the Federal Government” issued by the Comptroller General of the United States or the “Internal Control Integrated Framework”, issued by the Committee of Sponsoring Organizations of the Treadway Commission</p> |

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| <p>(e) Where bonds are required under paragraphs (a) and (b) of this section, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties, as prescribed in 31 CFR Part 223—Surety Companies Doing Business with the United States.</p> | <p>(COSO).</p> <p>(b) Comply with Federal statutes, regulations, and the terms and conditions of the Federal awards.</p> <p>(c) Evaluate and monitor the non-Federal entity's compliance with statutes, regulations and the terms and conditions of Federal awards.</p> <p>(d) Take prompt action when instances of noncompliance are identified including noncompliance identified in audit findings.</p> <p>(e) Take reasonable measures to safeguard protected personally identifiable information and other information the Federal awarding agency or pass-through entity designates as sensitive or the non-Federal entity considers sensitive consistent with applicable Federal, state, local, and tribal laws regarding privacy and obligations of confidentiality.</p> <p><b>§200.304 Bonds.</b><br/>The Federal awarding agency may include a provision on bonding, insurance, or both in the following circumstances:</p> <p>(a) Where the Federal government guarantees or insures the repayment of money borrowed by the recipient, the Federal awarding agency, at its discretion, may require adequate bonding and insurance if the bonding and insurance requirements of the non-Federal entity are not deemed adequate to protect the interest of the Federal government.</p> <p>(b) The Federal awarding agency may require adequate fidelity bond coverage where the non-Federal entity lacks sufficient coverage to protect the Federal government's interest.</p> <p>(c) Where bonds are required in the situations described above, the bonds must be obtained from companies holding certificates of authority as acceptable sureties, as prescribed in 31 CFR Part 223, “Surety Companies Doing Business with the United States.”</p> |
| <p><b>§74.22 Payment.</b></p> <p>(a) Payment methods shall minimize the time elapsing between the transfer of funds from the United States Treasury and the issuance or redemption of checks, warrants, or</p>  | <p><b>§200.305 Payment.</b></p> <p>(a) For states, payments are governed by Treasury-State CMIA agreements and default procedures codified at 31 CFR Part 205 “Rules and Procedures for Efficient Federal-State Funds Transfers” and TFM 4A-2000 Overall Disbursing Rules for All Federal Agencies.</p> <p>(b) For non-Federal entities other than states, payments</p>  |



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| <p>payment by other means by the recipients. Payment methods of State agencies or instrumentalities shall be consistent with Treasury-State CMIA agreements or default procedures codified at 31 CFR part 205.</p> <p>(b)(1) Recipients are paid in advance, provided they maintain or demonstrate the willingness to maintain—</p> <p>(i) Written procedures that minimize the time elapsing between the transfer of funds and disbursement by the recipient; and</p> <p>(ii) Financial management systems that meet the standards for fund control and accountability as established in §74.21.</p> <p>(2) Cash advances to a recipient organization are 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.</p> <p>(3) The timing and amount of cash advances are 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.</p> <p>(c) Whenever possible, advances are consolidated to cover anticipated cash needs for all awards made by the Secretary.</p> <p>(1) Advance payment mechanisms include, but are not limited to, Treasury check, and electronic funds transfer.</p> <p>(2) Advance payment mechanisms are subject to 31 CFR part 205.</p> <p>(3) Recipients are authorized to submit requests for advances and reimbursements at least monthly when electronic fund transfers are not used.</p> <p>(d) Requests for Treasury check advance payment shall be submitted on SF-270—Request for Advance or Reimbursement—or</p> | <p>methods must minimize the time elapsing between the transfer of funds from the United States Treasury or the pass-through entity and the disbursement by the non-Federal entity whether the payment is made by electronic funds transfer, or issuance or redemption of checks, warrants, or payment by other means. See also §200.302 Financial management paragraph (b)(6). Except as noted elsewhere in this part, Federal agencies must require recipients to use only OMB-approved standard governmentwide information collection requests to request payment.</p> <p>(1) The non-Federal entity must be paid in advance, provided it maintains or demonstrates the willingness to maintain both written procedures that minimize the time elapsing between the transfer of funds and disbursement by the non-Federal entity, and financial management systems that meet the standards for fund control and accountability as established in this part. Advance payments to a non-Federal entity must be limited to the minimum amounts needed and be timed to be in accordance with the actual, immediate cash requirements of the non-Federal entity in carrying out the purpose of the approved program or project. The timing and amount of advance payments must be as close as is administratively feasible to the actual disbursements by the non-Federal entity for direct program or project costs and the proportionate share of any allowable indirect costs. The non-Federal entity must make timely payment to contractors in accordance with the contract provisions.</p> <p>(2) Whenever possible, advance payments must be consolidated to cover anticipated cash needs for all Federal awards made by the Federal awarding agency to the recipient.</p> <p>(i) Advance payment mechanisms include, but are not limited to, Treasury check and electronic funds transfer and must comply with applicable guidance in 31 CFR part 208.</p> <p>(ii) Non-Federal entities must be authorized to submit requests for advance payments and reimbursements at least monthly when electronic fund transfers are not used, and as often as they like when electronic transfers are used, in accordance with the provisions of the</p> |



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| <p>other forms as may be authorized by OMB. This form is not to be used when Treasury check advance payments are made to the recipient automatically through the use of a predetermined payment schedule or if precluded by ED instructions for electronic funds transfer.</p> <p>(e) Reimbursement is the preferred method when the requirements in paragraph (b) of this section cannot be met. The Secretary 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.</p> <p>(1) When the reimbursement method is used, the Secretary makes payment within 30 days after receipt of the billing, unless the billing is improper.</p> <p>(2) Recipients are authorized to submit request for reimbursement at least monthly when electronic funds transfers are not used.</p> <p>(f) If a recipient cannot meet the criteria for advance payments and the Secretary has determined that reimbursement is not feasible because the recipient lacks sufficient working capital, the Secretary may provide cash on a working capital advance basis. Under this procedure, the Secretary advances cash to the recipient to cover its estimated disbursement needs for an initial period generally geared to the awardee's disbursing cycle. Thereafter, the Secretary reimburses the recipient for its actual cash disbursements. The working capital advance method of payment is not used for recipients unwilling or unable to provide timely advances to their subrecipient to meet the subrecipient's actual cash disbursements.</p> | <p>Electronic Fund Transfer Act (15 U.S.C. 1693-1693r).</p> <p>(3) Reimbursement is the preferred method when the requirements in paragraph (b) cannot be met, when the Federal awarding agency sets a specific condition per §200.207 Specific conditions, or when the non-Federal entity requests payment by reimbursement. This method may be used on any Federal award for construction, or if the major portion of the construction project is accomplished through private market financing or Federal loans, and the Federal award constitutes a minor portion of the project. When the reimbursement method is used, the Federal awarding agency or pass-through entity must make payment within 30 calendar days after receipt of the billing, unless the Federal awarding agency or pass-through entity reasonably believes the request to be improper.</p> <p>(4) If the non-Federal entity cannot meet the criteria for advance payments and the Federal awarding agency or pass-through entity has determined that reimbursement is not feasible because the non-Federal entity lacks sufficient working capital, the Federal awarding agency or pass-through entity may provide cash on a working capital advance basis. Under this procedure, the Federal awarding agency or pass-through entity must advance cash payments to the non-Federal entity to cover its estimated disbursement needs for an initial period generally geared to the non-Federal entity's disbursing cycle. Thereafter, the Federal awarding agency or pass-through entity must reimburse the non-Federal entity for its actual cash disbursements. Use of the working capital advance method of payment requires that the pass-through entity provide timely advance payments to any subrecipients in order to meet the subrecipient's actual cash disbursements. The</p> |

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| <p>(g) To the extent available, recipients shall disburse funds available from repayments to and interest earned on a revolving fund, program income, rebates, refunds, contract settlements, audit recoveries, and interest earned on these funds before requesting additional cash payments.</p> <p>(h) Unless otherwise required by statute, the Secretary does not withhold payments for proper charges made by recipients at any time during the project period unless—</p> <p>(1) A recipient has failed to comply with the project objectives, the terms and conditions of the award, or Federal reporting requirements; or</p> <p>(2) The recipient or subrecipient is delinquent in a debt to the United States as defined in OMB Circular A-129—Managing Federal Credit Programs. Under these conditions, the Secretary may, upon reasonable notice, inform the recipient that ED does not make payments for obligations incurred after a specified date until the conditions are corrected or the indebtedness to the Federal Government is liquidated.</p> <p>(i) The standards governing the use of banks</p> | <p>working capital advance method of payment must not be used by the pass-through entity if the reason for using this method is the unwillingness or inability of the pass-through entity to provide timely advance payments to the subrecipient to meet the subrecipient's actual cash disbursements.</p> <p>(5) Use of resources before requesting cash advance payments. To the extent available, the non-Federal entity must disburse funds available from program income (including repayments to a revolving fund), rebates, refunds, contract settlements, audit recoveries, and interest earned on such funds before requesting additional cash payments.</p> <p>(6) Unless otherwise required by Federal statutes, payments for allowable costs by non-Federal entities must not be withheld at any time during the period of performance unless the conditions of §§200.207 Specific conditions, Subpart D—Post Federal Award Requirements of this part, 200.338 Remedies for Noncompliance, or one or more of the following applies:</p> <p>(i) The non-Federal entity has failed to comply with the project objectives, Federal statutes, regulations, or the terms and conditions of the Federal award.</p> <p>(ii) The non-Federal entity is delinquent in a debt to the United States as defined in OMB Guidance A-129, “Policies for Federal Credit Programs and Non-Tax Receivables.” Under such conditions, the Federal awarding agency or pass-through entity may, upon reasonable notice, inform the non-Federal entity that payments must not be made for obligations incurred after a specified date until the conditions are corrected or the indebtedness to the Federal Government is liquidated.</p> <p>(iii) A payment withheld for failure to comply with Federal award conditions, but without suspension of the Federal award, must be released to the non-Federal entity upon subsequent compliance. When a Federal award is suspended, payment adjustments will be made in accordance with §200.342 Effects of suspension and termination.</p> <p>(iv) A payment must not be made to a non-Federal entity for amounts that are withheld by the non-Federal entity from payment to contractors to assure satisfactory completion of work. A payment must be</p> |

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| <p>and other institutions as depositories of funds advanced under awards are as follows:</p> <p>(1) Except for situations described in paragraph (i)(2) of this section, the Secretary does not require separate depository accounts for funds provided to a recipient or establish any eligibility requirements for depositories for funds provided to a recipient. However, recipients must be able to account for the receipt, obligation, and expenditure of funds.</p> <p>(2) Advances of Federal funds shall be deposited and maintained in insured accounts whenever possible.</p> <p>(j) Consistent with the national goal of expanding the opportunities for women-owned and minority-owned business enterprises, recipients shall be encouraged to use women-owned and minority-owned banks (a bank which is owned at least 50 percent by women or minority group members).</p> <p>(k) Recipients shall maintain advances of Federal funds in interest bearing accounts, unless—</p> <p>(1) The recipient receives less than \$120,000 in Federal awards per year;</p> <p>(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; or</p> <p>(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.</p> | <p>made when the non-Federal entity actually disburses the withheld funds to the contractors or to escrow accounts established to assure satisfactory completion of work.</p> <p>(7) Standards governing the use of banks and other institutions as depositories of advance payments under Federal awards are as follows.</p> <p>(i) The Federal awarding agency and pass-through entity must not require separate depository accounts for funds provided to a non-Federal entity or establish any eligibility requirements for depositories for funds provided to the non-Federal entity. However, the non-Federal entity must be able to account for the receipt, obligation and expenditure of funds.</p> <p>(ii) Advance payments of Federal funds must be deposited and maintained in insured accounts whenever possible.</p> <p>(8) The non-Federal entity must maintain advance payments of Federal awards in interest-bearing accounts, unless the following apply.</p> <p>(i) The non-Federal entity receives less than \$120,000 in Federal awards per year.</p> <p>(ii) The best reasonably available interest-bearing account would not be expected to earn interest in excess of \$500 per year on Federal cash balances.</p> <p>(iii) The depository would require an average or minimum balance so high that it would not be feasible within the expected Federal and non-Federal cash resources.</p> <p>(iv) A foreign government or banking system prohibits</p> |

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|                | <p>or precludes interest bearing accounts.</p> <p>(9) Interest earned amounts up to \$500 per year may be retained by the non-Federal entity for administrative expense. Any additional interest earned on Federal advance payments deposited in interest-bearing accounts must be remitted annually to the Department of Health and Human Services Payment Management System (PMS) through an electronic medium using either Automated Clearing House (ACH) network or a Fedwire Funds Service payment. Remittances must include pertinent information of the payee and nature of payment in the memo area (often referred to as “addenda records” by Financial Institutions) as that will assist in the timely posting of interested earned on federal funds. Pertinent details include the Payee Account Number (PAN) if the payment originated from PMS, or Agency information if the payment originated from ASAP, NSF or another federal agency payment system. The remittance must be submitted as follows:</p> <p>(i) For ACH Returns:<br/> Routing Number: 051036706<br/> Account number: 303000<br/> Bank Name and Location: Credit Gateway—ACH Receiver St. Paul, MN</p> <p>(ii) For Fedwire Returns*:<br/> Routing Number: 021030004<br/> Account number: 75010501<br/> Bank Name and Location: Federal Reserve Bank Treas NYC/Funds Transfer Division New York, NY<br/> (* Please note organization initiating payment is likely to incur a charge from your Financial Institution for this type of payment)</p> <p>(iii) For International ACH Returns:<br/> Beneficiary Account: Federal Reserve Bank of New York/ITS (FRBNY/ITS)<br/> Bank: Citibank N.A. (New York)<br/> Swift Code: CITIUS33<br/> Account Number: 36838868<br/> Bank Address: 388 Greenwich Street, New York, NY 10013 USA<br/> Payment Details (Line 70): Agency Name (abbreviated when possible) and ALC Agency<br/> POC: Michelle Haney, (301) 492-5065</p> <p>(iv) For recipients that do not have electronic remittance capability, please make check** payable to: “The Department of Health and Human Services.”</p> |

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| <p>(l) For those entities where CMIA and its implementing regulations do not apply, interest earned on Federal advances deposited in interest bearing accounts shall be remitted annually to Department of Health and Human Services, Payment Management System, Rockville, MD 20852. Interest amounts up to \$250 per year may be retained by the recipient for administrative expense. State universities and hospitals shall comply with CMIA, as it pertains to interest. If an entity subject to CMIA uses its own funds to pay pre-award costs for discretionary awards without prior written approval from the Secretary, it waives its right to recover the interest under CMIA.</p> <p>(m) Except as noted elsewhere in this part, only the following forms are authorized for the recipients in requesting advances and reimbursements. The Secretary does not require more than an original and two copies of the following:</p> <p>(1) SF-270—Request for Advance or Reimbursement. The Secretary adopts the SF-270 as a standard form for all nonconstruction programs when electronic funds transfer or predetermined advance methods are not used. The Secretary may, however, use this form for construction programs in lieu of the SF-271—Outlay Report and Request for Reimbursement for Construction Programs.</p> <p>(2) SF-271—Outlay Report and Request for Reimbursement for Construction Programs. The Secretary adopts the SF-271 as the standard form to be used for requesting reimbursement for construction programs.</p> | <p>Mail Check to Treasury approved lockbox:<br/>HHS Program Support Center, P.O. Box 530231, Atlanta, GA 30353-0231<br/>(** Please allow 4-6 weeks for processing of a payment by check to be applied to the appropriate PMS account)<br/>(v) Any additional information/instructions may be found on the PMS Web site<br/>at <a href="http://www.dpm.psc.gov/">http://www.dpm.psc.gov/</a>.</p> |

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| <p>However, the Secretary may substitute the SF-270 when the Secretary determines that it provides adequate information to meet Federal needs.</p>   |   |
| <p><b>§74.23 Cost sharing or matching.</b></p> <p>(a) All contributions, including cash and third party in-kind, are accepted as part of the recipient's cost sharing or matching when contributions meet the following criteria:</p> <ol style="list-style-type: none"> <li>(1) Are verifiable from the recipient's records.</li> <li>(2) Are not included as contributions for any other federally-assisted project or program.</li> <li>(3) Are necessary and reasonable for proper and efficient accomplishment of project or program objectives.</li> <li>(4) Are allowable under the applicable cost principles.</li> <li>(5) Are not paid by the Federal Government under another award, except where authorized by Federal statute to be used for cost sharing or matching.</li> <li>(6) Are provided for in the approved budget when required by the Secretary.</li> <li>(7) Conform to other provisions of this part, as applicable.</li> </ol> <p>(b) Unrecovered indirect costs may be included as part of cost sharing or matching only with the prior approval of the Secretary.</p> | <p><b>§200.306 Cost sharing or matching.</b></p> <p>(a) Under Federal research proposals, voluntary committed cost sharing is not expected. It cannot be used as a factor during the merit review of applications or proposals, but may be considered if it is both in accordance with Federal awarding agency regulations and specified in a notice of funding opportunity. Criteria for considering voluntary committed cost sharing and any other program policy factors that may be used to determine who may receive a Federal award must be explicitly described in the notice of funding opportunity. See also §§200.414 Indirect (F&amp;A) costs, 200.203 Notices of funding opportunities, and Appendix I to Part 200—Full Text of Notice of Funding Opportunity.</p> <p>(b) For all Federal awards, any shared costs or matching funds and all contributions, including cash and third party in-kind contributions, must be accepted as part of the non-Federal entity's cost sharing or matching when such contributions meet all of the following criteria:</p> <ol style="list-style-type: none"> <li>(1) Are verifiable from the non-Federal entity's records;</li> <li>(2) Are not included as contributions for any other Federal award;</li> <li>(3) Are necessary and reasonable for accomplishment of project or program objectives;</li> <li>(4) Are allowable under Subpart E—Cost Principles of this part;</li> <li>(5) Are not paid by the Federal Government under another Federal award, except where the Federal statute authorizing a program specifically provides that Federal funds made available for such program can be applied to matching or cost sharing requirements of other Federal programs;</li> <li>(6) Are provided for in the approved budget when required by the Federal awarding agency; and</li> <li>(7) Conform to other provisions of this part, as applicable.</li> </ol> <p>(c) Unrecovered indirect costs, including indirect costs on cost sharing or matching may be included as part of cost sharing or matching only with the prior approval of the Federal awarding agency. Unrecovered indirect cost</p> |



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| <p>(c) Values for recipient contributions of services and property shall be established in accordance with the applicable cost principles. If the Secretary authorizes recipients to donate buildings or land for construction/facilities acquisition projects or long-term use, the value of the donated property for cost sharing or matching shall be the lesser of—</p> <p>(1) The certified value of the remaining life of the property recorded in the recipient's accounting records at the time of donation; or</p> <p>(2) The current fair market value. However, if there is sufficient justification, the Secretary may approve the use of the current fair market value of the donated property, even if it exceeds the certified value at the time of donation to the project.</p> <p>(d) Volunteer services furnished by professional and technical personnel, consultants, and other skilled and unskilled labor may be counted as cost sharing or matching if the service is an integral and necessary part of an approved project or program. Rates for volunteer services must be consistent with those paid for similar work in the recipient's organization. In those instances in which the required skills are not found in the recipient organization, rates must be consistent with those paid for similar work in the labor market in which the recipient competes for the kind of services involved. In either case, paid fringe benefits that are reasonable, allowable, and allocable may be included in the valuation.</p> <p>(e) When an employer other than the recipient furnishes the services of an employee, these services shall be valued at the employee's regular rate of pay (plus an amount of fringe benefits that are reasonable, allowable, and allocable, but exclusive of overhead costs), provided these</p> | <p>means the difference between the amount charged to the Federal award and the amount which could have been charged to the Federal award under the non-Federal entity's approved negotiated indirect cost rate.</p> <p>(d) Values for non-Federal entity contributions of services and property must be established in accordance with the cost principles in Subpart E—Cost Principles. If a Federal awarding agency authorizes the non-Federal entity to donate buildings or land for construction/facilities acquisition projects or long-term use, the value of the donated property for cost sharing or matching must be the lesser of paragraphs (d)(1) or (2) of this section.</p> <p>(1) The value of the remaining life of the property recorded in the non-Federal entity's accounting records at the time of donation.</p> <p>(2) The current fair market value. However, when there is sufficient justification, the Federal awarding agency may approve the use of the current fair market value of the donated property, even if it exceeds the value described in (1) above at the time of donation.</p> <p>(e) Volunteer services furnished by third-party professional and technical personnel, consultants, and other skilled and unskilled labor may be counted as cost sharing or matching if the service is an integral and necessary part of an approved project or program. Rates for third-party volunteer services must be consistent with those paid for similar work by the non-Federal entity. In those instances in which the required skills are not found in the non-Federal entity, rates must be consistent with those paid for similar work in the labor market in which the non-Federal entity competes for the kind of services involved. In either case, paid fringe benefits that are reasonable, necessary, allocable, and otherwise allowable may be included in the valuation.</p> <p>(f) When a third-party organization furnishes the services of an employee, these services must be valued at the employee's regular rate of pay plus an amount of fringe benefits that is reasonable, necessary, allocable, and otherwise allowable, and indirect costs at either the third-party organization's approved federally negotiated</p> |

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| <p>services are in the same skill for which the employee is normally paid.</p> <p>(f) Donated supplies may include such items as expendable equipment, office supplies, laboratory supplies, or workshop and classroom supplies. Value assessed to donated supplies included in the cost sharing or matching share shall be reasonable and shall not exceed the fair market value of the property at the time of the donation.</p> <p>(g) The method used for determining cost sharing or matching for donated equipment, buildings, and land for which title passes to the recipient may differ according to the purpose of the award.</p> <p>(1) If the purpose of the award is to assist the recipient in the acquisition of equipment, buildings or land, the total value of the donated property may be claimed as cost sharing or matching.</p> <p>(2) If the purpose of the award is to support activities that require the use of equipment, buildings or land, normally only depreciation or use charges for equipment and buildings may be made. However, the full value of equipment or other capital assets and fair rental charges for land may be allowed, provided that the Secretary has approved the charges.</p> <p>(h) The value of donated property must be determined in accordance with the usual accounting policies of the recipient, with the following qualifications:</p> <p>(1) The value of donated land and buildings may not exceed its fair market value at the time of donation to the recipient as established by an independent appraiser (e.g., certified real property appraiser or General Services Administration representative) and certified by a responsible official of the recipient.</p> | <p>indirect cost rate or, a rate in accordance with §200.414 Indirect (F&amp;A) costs, paragraph (d), provided these services employ the same skill(s) for which the employee is normally paid. Where donated services are treated as indirect costs, indirect cost rates will separate the value of the donated services so that reimbursement for the donated services will not be made.</p> <p>(g) Donated property from third parties may include such items as equipment, office supplies, laboratory supplies, or workshop and classroom supplies. Value assessed to donated property included in the cost sharing or matching share must not exceed the fair market value of the property at the time of the donation.</p> <p>(h) The method used for determining cost sharing or matching for third-party-donated equipment, buildings and land for which title passes to the non-Federal entity may differ according to the purpose of the Federal award, if paragraph (h)(1) or (2) of this section applies.</p> <p>(1) If the purpose of the Federal award is to assist the non-Federal entity in the acquisition of equipment, buildings or land, the aggregate value of the donated property may be claimed as cost sharing or matching.</p> <p>(2) If the purpose of the Federal award is to support activities that require the use of equipment, buildings or land, normally only depreciation charges for equipment and buildings may be made. However, the fair market value of equipment or other capital assets and fair rental charges for land may be allowed, provided that the Federal awarding agency has approved the charges. See also §200.420 Considerations for selected items of cost.</p> <p>(i) The value of donated property must be determined in accordance with the usual accounting policies of the non-Federal entity, with the following qualifications:</p> <p>(1) The value of donated land and buildings must not exceed its fair market value at the time of donation to the non-Federal entity as established by an independent appraiser (e.g., certified real property appraiser or General Services Administration representative) and certified by a responsible official of the non-Federal entity as required by the Uniform</p> |



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| <p>(2) The value of donated equipment may not exceed the fair market value of equipment of the same age and condition at the time of donation.</p> <p>(3) The value of donated space may not exceed the fair rental value of comparable space as established by an independent appraisal of comparable space and facilities in a privately-owned building in the same locality.</p> <p>(4) The value of loaned equipment shall not exceed its fair rental value.</p> <p>(5) The following requirements pertain to the recipient's supporting records for in-kind contributions from third parties:</p> <p>(i) Volunteer services must be documented and, to the extent feasible, supported by the same methods used by the recipient for its own employees.</p> <p>(ii) The basis for determining the valuation for personal service, material, equipment, buildings, and land must be documented.</p> | <p>Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (42 U.S.C. 4601-4655) (Uniform Act) except as provided in the implementing regulations at 49 CFR part 24.</p> <p>(2) The value of donated equipment must not exceed the fair market value of equipment of the same age and condition at the time of donation.</p> <p>(3) The value of donated space must not exceed the fair rental value of comparable space as established by an independent appraisal of comparable space and facilities in a privately-owned building in the same locality.</p> <p>(4) The value of loaned equipment must not exceed its fair rental value.</p> <p>(j) For third-party in-kind contributions, the fair market value of goods and services must be documented and to the extent feasible supported by the same methods used internally by the non-Federal entity.</p> <p>(k) For IHEs, see also OMB memorandum M-01-06, dated January 5, 2001, Clarification of OMB A-21 Treatment of Voluntary Uncommitted Cost Sharing and Tuition Remission Costs.</p> |
| <p><b>§74.24 Program income.</b></p> <p>(a) The Secretary applies the standards contained in this section in requiring recipient organizations to account for program income related to projects financed in whole or in part with Federal funds.</p> <p><b>[C. Ref. Paragraph (f) of this section]</b></p>  | <p><b>§200.307 Program income.</b></p> <p>(a) <i>General.</i> Non-Federal entities are encouraged to earn income to defray program costs where appropriate.</p> <p>(b) <i>Cost of generating program income.</i> If authorized by Federal regulations or the Federal award, costs incidental to the generation of program income may be deducted from gross income to determine program income, provided these costs have not been charged to the Federal award.</p> <p>(c) <i>Governmental revenues.</i> Taxes, special assessments, levies, fines, and other such revenues raised by a non-Federal entity are not program income unless the revenues are specifically identified in the Federal award or Federal awarding agency regulations as program</p>   |

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| <p data-bbox="191 548 634 575"><b>[C. Ref. paragraph (g) of this section]</b></p> <p data-bbox="191 835 732 1079">(b) Except as provided in paragraph (h) of this section, program income earned during the project period must be retained by the recipient and, in accordance with ED regulations or the terms and conditions of the award, must be used in one or more of the following ways:</p> <p data-bbox="191 1245 643 1272"><b>[C. Ref. paragraph (d) of this section]</b></p> <p data-bbox="191 1520 732 1619">(1) Added to funds committed to the project by the Secretary and recipient and used to further eligible project or program objectives.</p> <p data-bbox="191 1625 716 1688">(2) Used to finance the non-Federal share of the project or program.</p> <p data-bbox="191 1696 699 1829">(3) Deducted from the total project or program allowable cost in determining the net allowable costs on which the Federal share of costs is based.</p> <p data-bbox="191 1837 708 1900">(c) When the Secretary authorizes the disposition of program income as described</p> | <p data-bbox="764 245 857 273">income.</p> <p data-bbox="764 281 1430 590">(d) <i>Property.</i> Proceeds from the sale of real property, equipment, or supplies are not program income; such proceeds will be handled in accordance with the requirements of Subpart D—Post Federal Award Requirements of this part, Property Standards §§200.311 Real property, 200.313 Equipment, and 200.314 Supplies, or as specifically identified in Federal statutes, regulations, or the terms and conditions of the Federal award.</p> <p data-bbox="764 598 1430 1268">(e) <i>Use of program income.</i> If the Federal awarding agency does not specify in its regulations or the terms and conditions of the Federal award, or give prior approval for how program income is to be used, paragraph (e)(1) of this section must apply. For Federal awards made to IHEs and nonprofit research institutions, if the Federal awarding agency does not specify in its regulations or the terms and conditions of the Federal award how program income is to be used, paragraph (e)(2) of this section must apply. In specifying alternatives to paragraphs (e)(1) and (2) of this section, the Federal awarding agency may distinguish between income earned by the recipient and income earned by subrecipients and between the sources, kinds, or amounts of income. When the Federal awarding agency authorizes the approaches in paragraphs (e)(2) and (3) of this section, program income in excess of any amounts specified must also be deducted from expenditures.</p> <p data-bbox="764 1276 1422 1585">(1) <i>Deduction.</i> Ordinarily program income must be deducted from total allowable costs to determine the net allowable costs. Program income must be used for current costs unless the Federal awarding agency authorizes otherwise. Program income that the non-Federal entity did not anticipate at the time of the Federal award must be used to reduce the Federal award and non-Federal entity contributions rather than to increase the funds committed to the project.</p> <p data-bbox="764 1593 1398 1871">(2) <i>Addition.</i> With prior approval of the Federal awarding agency (except for IHEs and nonprofit research institutions, as described in paragraph (e) of this section) program income may be added to the Federal award by the Federal agency and the non-Federal entity. The program income must be used for the purposes and under the conditions of the Federal award.</p> |

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| <p>in paragraphs (b)(1) or (b)(2) of this section, program income in excess of any limits stipulated shall be used in accordance with paragraph (b)(3) of this section.</p> <p>(d) In the event that the Secretary does not specify in program regulations or the terms and conditions of the award how program income is to be used, paragraph (b)(3) of this section applies automatically to all projects or programs except research. For awards that support research, paragraph (b)(1) of this section applies automatically unless the Secretary indicates in the terms and conditions another alternative on the award or the recipient is subject to special award conditions, as indicated in §74.14.</p> <p>(e) Unless ED regulations or the terms and conditions of the award provide otherwise, recipients have no obligation to the Federal Government regarding program income earned after the end of the project period.</p> <p>(f) If authorized by ED or the terms and conditions of the award, costs incident to the generation of program income may be deducted from gross income to determine program income, provided these costs have not been charged to the award.</p> <p>(g) Proceeds from the sale of property shall be handled in accordance with the requirements of the Property Standards (See §§74.30 through 74.37).</p> <p>(h) Unless ED regulations or the terms and condition of the award provide otherwise, recipients have no obligation to the Federal Government with respect to program income earned from license fees and royalties for copyrighted material, patents, patent applications, trademarks, and inventions produced under an award. However, Patent and Trademark Amendments (35 U.S.C. 18) apply to inventions made under an experimental, developmental, or research award.</p> | <p>(3) <i>Cost sharing or matching.</i> With prior approval of the Federal awarding agency, program income may be used to meet the cost sharing or matching requirement of the Federal award. The amount of the Federal award remains the same.</p> <p>(f) <i>Income after the period of performance.</i> There are no Federal requirements governing the disposition of income earned after the end of the period of performance for the Federal award, unless the Federal awarding agency regulations or the terms and conditions of the Federal award provide otherwise. The Federal awarding agency may negotiate agreements with recipients regarding appropriate uses of income earned after the period of performance as part of the grant closeout process. See also §200.343 Closeout.</p> <p>(g) Unless the Federal statute, regulations, or terms and conditions for the Federal award provide otherwise, the non-Federal entity has no obligation to the Federal awarding agency with respect to program income</p> |

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|   | <p>earned from license fees and royalties for copyrighted material, patents, patent applications, trademarks, and inventions made under a Federal award to which 37 CFR part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Awards, Contracts and Cooperative Agreements” is applicable.</p>  |
| <p><b>§74.25 Revision of budget and program plans.</b></p> <p>(a) The budget plan is the financial expression of the project or program as approved during the award process. It may include either the Federal and non-Federal share, or only the Federal share, depending upon ED requirements. It shall be related to performance for program evaluation purposes whenever appropriate.</p> <p>(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.</p> <p>(c) For nonconstruction awards, recipients shall request prior approvals from ED for one or more of the following program or budget related reasons:</p> <p>(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).</p> <p>(2) Change in a key person specified in the application or award document.</p> <p>(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.</p> <p>(4) The need for additional Federal funding.</p> <p>(5) The transfer of amounts budgeted for indirect costs to absorb increases in direct costs, or vice versa, if approval is required by the Secretary.</p> <p>(6) The inclusion, unless waived by the Secretary, of costs that require prior approval in accordance with OMB Circular A-21—Cost Principles for Institutions of Higher</p> | <p><b>§200.308 Revision of budget and program plans.</b></p> <p>(a) The approved budget for the Federal award summarizes the financial aspects of the project or program as approved during the Federal award process. It may include either the Federal and non-Federal share (see §200.43 Federal share) or only the Federal share, depending upon Federal awarding agency requirements. It must be related to performance for program evaluation purposes whenever appropriate.</p> <p>(b) Recipients are required to report deviations from budget or project scope or objective, and request prior approvals from Federal awarding agencies for budget and program plan revisions, in accordance with this section.</p> <p>(c) For non-construction Federal awards, recipients must request prior approvals from Federal awarding agencies for one or more of the following program or budget-related reasons:</p> <p>(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).</p> <p>(2) Change in a key person specified in the application or the Federal award.</p> <p>(3) The disengagement from the project for more than three months, or a 25 percent reduction in time devoted to the project, by the approved project director or principal investigator.</p> <p>(4) The inclusion, unless waived by the Federal awarding agency, of costs that require prior approval in accordance with Subpart E—Cost Principles of this part or 45 CFR part 75 Appendix IX, “Principles for</p> |

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| <p>Education, 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.</p> <p>(7) The transfer of funds allotted for training allowances (direct payment to trainees) to other categories of expense.</p> <p>(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.</p> <p>(d) No other prior approval requirements for specific items are imposed unless a deviation has been approved by OMB.</p> <p>(e) Except for requirements listed in paragraphs (c)(1) and (c)(4) of this section, the Secretary may waive cost-related and administrative prior written approvals required by this part and OMB Circulars A-21 and A-122. These waivers may authorize recipients to do any one or more of the following:</p> <p>(1) Incur pre-award costs 90 calendar days prior to award or more than 90 calendar days with the prior approval of the Secretary. All pre-award costs are incurred at the recipient's risk (i.e., the Secretary is under no obligation to reimburse these costs if for any reason the recipient does not receive an award or if the award is less than anticipated and inadequate to cover these costs).</p> <p>(2)(i) Initiate a one-time extension of the expiration date of the award of up to 12</p> | <p>Determining Costs Applicable to Research and Development under Awards and Contracts with Hospitals,” or 48 CFR part 31, “Contract Cost Principles and Procedures,” as applicable.</p> <p>(5) The transfer of funds budgeted for participant support costs as defined in §200.75 Participant support costs to other categories of expense.</p> <p>(6) Unless described in the application and funded in the approved Federal awards, the subawarding, transferring or contracting out of any work under a Federal award, including fixed amount subawards as described in §200.332 Fixed amount subawards. This provision does not apply to the acquisition of supplies, material, equipment or general support services.</p> <p>(7) Changes in the approved cost-sharing or matching provided by the non-Federal entity. No other prior approval requirements for specific items may be imposed unless an exception has been approved by OMB. See also §§200.102 Exceptions and 200.407 Prior written approval (prior approval).</p> <p>(8) The need arises for additional Federal funds to complete the project.</p> <p>(d) Except for requirements listed in paragraph (c)(1) of this section, the Federal awarding agency is authorized, at its option, to waive prior written approvals required by paragraph (c) this section. Such waivers may include authorizing recipients to do any one or more of the following:</p> <p>(1) Incur project costs 90 calendar days before the Federal awarding agency makes the Federal award. Expenses more than 90 calendar days pre-award require prior approval of the Federal awarding agency. All costs incurred before the Federal awarding agency makes the Federal award are at the recipient's risk (i.e., the Federal awarding agency is under no obligation to reimburse such costs if for any reason the recipient does not receive a Federal award or if the Federal award is less than anticipated and inadequate to cover such costs). See also §200.458 Pre-award costs.</p> <p>(2) Initiate a one-time extension of the period of performance by up to 12 months unless one or more of the conditions outlined in paragraphs (d)(2)(i) through</p> |

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| <p>months unless one or more of the following conditions apply:</p> <p>(A) The terms and conditions of award prohibit the extension.</p> <p>(B) The extension requires additional Federal funds.</p> <p>(C) The extension involves any change in the approved objectives or scope of the project.</p> <p>(ii) For one-time extensions, the recipient shall notify the Secretary in writing with the supporting reasons and revised expiration date at least 10 days before the expiration date specified in the award. This one-time extension may not be exercised merely for the purpose of using unobligated balances.</p> <p>(3) Carry forward unobligated balances to subsequent funding periods.</p> <p>(4) For awards that support research, unless the Secretary provides otherwise in the award or in ED's regulations, the prior approval requirements described in paragraph (e) of this section are automatically waived (i.e., recipients need not obtain prior approvals) unless one of the conditions included in paragraph (e)(2)(i) of this section applies.</p> <p>(f) The Secretary may restrict the transfer of funds among direct cost categories or programs, functions and activities for awards in which the Federal share of the project exceeds \$100,000 and the cumulative amount of the transfers exceeds or is expected to exceed 10 percent of the total budget as last approved by the Secretary. The Secretary does not permit a transfer that would cause any Federal appropriation or part thereof to be used for purposes other than those consistent with the original intent of the appropriation.</p> | <p>(iii) of this section apply. For one-time extensions, the recipient must notify the Federal awarding agency in writing with the supporting reasons and revised period of performance at least 10 calendar days before the end of the period of performance specified in the Federal award. This one-time extension may not be exercised merely for the purpose of using unobligated balances. Extensions require explicit prior Federal awarding agency approval when:</p> <p>(i) The terms and conditions of the Federal award prohibit the extension.</p> <p>(ii) The extension requires additional Federal funds.</p> <p>(iii) The extension involves any change in the approved objectives or scope of the project.</p> <p>(3) Carry forward unobligated balances to subsequent periods of performance.</p> <p>(4) For Federal awards that support research, unless the Federal awarding agency provides otherwise in the Federal award or in the Federal awarding agency's regulations, the prior approval requirements described in paragraph (d) are automatically waived (i.e., recipients need not obtain such prior approvals) unless one of the conditions included in paragraph (d)(2) applies.</p> <p>(e) The Federal awarding agency may, at its option, restrict the transfer of funds among direct cost categories or programs, functions and activities for Federal awards in which the Federal share of the project exceeds the Simplified Acquisition Threshold and the cumulative amount of such transfers exceeds or is expected to exceed 10 percent of the total budget as last approved by the Federal awarding agency. The Federal awarding agency cannot permit a transfer that would cause any Federal appropriation to be used for purposes other than those consistent with the</p> |



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| <p>(g) All other changes to nonconstruction budgets, except for the changes described in paragraph (j) of this section, do not require prior approval.</p> <p>(h) For construction awards, recipients shall request prior written approval promptly from the Secretary for budget revisions whenever—</p> <p>(1) The revision results from changes in the scope or the objective of the project or program;</p> <p>(2) The need arises for additional Federal funds to complete the project; or</p> <p>(3) A revision is desired which involves specific costs for which prior written approval requirements may be imposed consistent with applicable OMB cost principles listed in §74.27.</p> <p>(i) No other prior approval requirements for specific items may be imposed unless a deviation has been approved by OMB.</p> <p>(j) When the Secretary makes an award that provides support for both construction and nonconstruction work, the Secretary may require the recipient to request prior approval from the Secretary before making any fund or budget transfers between the two types of work supported.</p> <p>(k) For both construction and nonconstruction awards, recipients shall notify the Secretary in writing promptly whenever the amount of Federal authorized funds is expected to exceed the needs of the recipient for the project period by more than \$5,000 or five percent of the Federal award, whichever is greater. This notification shall not be required if an application for additional funding is submitted for a continuation award.</p> <p>(l) When requesting approval for budget revisions, recipients shall use the budget forms that were used in the application unless the Secretary indicates a letter of request suffices.</p> <p>(m) Within 30 calendar days from the date of receipt of the request for budget revisions,</p> | <p>appropriation.</p> <p>(f) All other changes to non-construction budgets, except for the changes described in paragraph (c) of this section, do not require prior approval (see also §200.407 Prior written approval (prior approval)).</p> <p>(g) For construction Federal awards, the recipient must request prior written approval promptly from the Federal awarding agency for budget revisions whenever paragraph (g)(1), (2), or (3) of this section applies.</p> <p>(1) The revision results from changes in the scope or the objective of the project or program.</p> <p>(2) The need arises for additional Federal funds to complete the project.</p> <p>(3) A revision is desired which involves specific costs for which prior written approval requirements may be imposed consistent with applicable OMB cost principles listed in Subpart E—Cost Principles of this part.</p> <p>(4) No other prior approval requirements for budget revisions may be imposed unless an exception has been approved by OMB.</p> <p>(5) When a Federal awarding agency makes a Federal award that provides support for construction and non-construction work, the Federal awarding agency may require the recipient to obtain prior approval from the Federal awarding agency before making any fund or budget transfers between the two types of work supported.</p> <p>(h) When requesting approval for budget revisions, the recipient must use the same format for budget information that was used in the application, unless the Federal awarding agency indicates a letter of request suffices.</p> |

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| <p>the Secretary shall review the request and notify the recipient whether the budget revisions have been approved. If the revision is still under consideration at the end of 30 calendar days, the Secretary informs the recipient in writing of the date when the recipient may expect the decision.</p>   | <p>(i) Within 30 calendar days from the date of receipt of the request for budget revisions, the Federal awarding agency must review the request and notify the recipient whether the budget revisions have been approved. If the revision is still under consideration at the end of 30 calendar days, the Federal awarding agency must inform the recipient in writing of the date when the recipient may expect the decision.</p> |
| <p><b>§74.26 Non-Federal audits.</b><br/>           (a) Recipients and subrecipients that are institutions of higher education or other non-profit organizations (including hospitals) shall be subject to the audit requirements contained in the Single Audit Act Amendments of 1996 (31 U.S.C. 7501-7507) and revised OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations."<br/>           (b) State and local governments shall be subject to the audit requirements contained in the Single Audit Act Amendments of 1996 (31 U.S.C. 7501-7507) and revised OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations."<br/>           (c) For-profit hospitals not covered by the audit provisions of revised OMB Circular A-133 shall be subject to the audit requirements of the Federal awarding agencies.<br/>           (d) Commercial organizations are subject to the audit requirements established by the Secretary or the prime recipient as incorporated into the award document.</p> | <p><b>[C. Ref. See 2 CFR part 200, subpart F Re: Audit]</b></p>  |
| <p><b>§74.27 Allowable costs.</b><br/>           (a) For each kind of recipient, there is a set of cost principles for determining allowable costs. Allowability of costs are determined in accordance with the cost principles applicable to the entity incurring the costs, as specified in the following chart.<br/>           Note: OMB circulars are available from the Office of Management and Budget, Publication Office, Room 2200, New Executive Office Building, Washington, DC</p>  | <p><b>[C. Ref. 2 CFR part 200, subpart E]</b></p>  |



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| <p>20503 (202) 395-7332.)<br/>[The Chart in §74.27 is reformatted here as paragraphs]:<br/><b>For the cost of a</b> Private nonprofit organization other than (1) An institution of higher education; (2) a hospital; or (3) an organization named in OMB Circular A-122 as not subject to that circular <b>Use the principles in OMB Circular A-122</b><br/><b>For the cost of a</b> Educational institution <b>Use the principles in OMB Circular A-21</b><br/><b>For the cost of a</b> Hospital <b>Use the principles in Appendix E to 45 CFR part 74</b><br/><b>For the cost of a</b> Commercial for-profit organization other than a hospital and an educational institution <b>Use the principles in 48 CFR part 31 Contract Cost Principles and Procedures or uniform cost accounting standards that comply with cost principles acceptable to ED.</b><br/>(b) The cost principles applicable to a State, a local government, or Federally recognized Indian tribal government are specified at 34 CFR §80.22.</p> |   |
| <p><b>§74.28 Period of availability of funds.</b><br/>Where a funding period is specified, a recipient may charge to the grant only allowable costs resulting from obligations incurred during the funding period and any pre-award costs authorized by the Secretary.</p>  | <p><b>200.309 Period of performance.</b><br/>A non-Federal entity may charge to the Federal award only allowable costs incurred during the period of performance (except as described in §200.461 Publication and printing costs) and any costs incurred before the Federal awarding agency or pass-through entity made the Federal award that were authorized by the Federal awarding agency or pass-through entity.</p>   |
|   | <p><b>§200.300 Statutory and national policy requirements.</b><br/>(a) The Federal awarding agency must manage and administer the Federal award in a manner so as to ensure that Federal funding is expended and associated programs are implemented in full accordance with U.S. statutory and public policy requirements: including, but not limited to, those protecting public welfare, the environment, and prohibiting discrimination. The Federal awarding agency must communicate to the non-Federal entity all relevant public policy requirements, including those in general appropriations provisions, and incorporate them either directly or by</p> |

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|  | <p>reference in the terms and conditions of the Federal award.</p> <p>(b) The non-Federal entity is responsible for complying with all requirements of the Federal award. For all Federal awards, this includes the provisions of FFATA, which includes requirements on executive compensation, and also requirements implementing the Act for the non-Federal entity at 2 CFR part 25 Financial Assistance Use of Universal Identifier and Central Contractor Registration and 2 CFR part 170 Reporting Subaward and Executive Compensation Information. See also statutory requirements for whistleblower protections at 10 U.S.C. 2409, 41 U.S.C. 4712, and 10 U.S.C. 2324, 41 U.S.C. 4304 and 4310.</p>   |
| <p><b>[C. Ref. 34 CR 75.110, 75.210(h), 75.250(b), 75.253, 75.590 Re: Performance measurement]</b></p> | <p><b>§200.301 Performance measurement.</b></p> <p>The Federal awarding agency must require the recipient to use OMB-approved standard information collections when providing financial and performance information. As appropriate and in accordance with above mentioned information collections, the Federal awarding agency must require the recipient to relate financial data to performance accomplishments of the Federal award. Also, in accordance with above mentioned standard information collections, and when applicable, recipients must also provide cost information to demonstrate cost effective practices (e.g., through unit cost data). The recipient's performance should be measured in a way that will help the Federal awarding agency and other non-Federal entities to improve program outcomes, share lessons learned, and spread the adoption of promising practices. The Federal awarding agency should provide recipients with clear performance goals, indicators, and milestones as described in §200.210 Information contained in a Federal award. Performance reporting frequency and content should be established to not only allow the Federal awarding agency to understand the recipient progress but also to facilitate identification of promising practices among recipients and build the evidence upon which the Federal awarding agency's program and performance decisions are made.</p> |
|  | <p><b>§200.304 Bonds.</b></p> <p>The Federal awarding agency may include a provision on bonding, insurance, or both in the following circumstances:</p>   |

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|   | <p>(a) Where the Federal government guarantees or insures the repayment of money borrowed by the recipient, the Federal awarding agency, at its discretion, may require adequate bonding and insurance if the bonding and insurance requirements of the non-Federal entity are not deemed adequate to protect the interest of the Federal government.</p> <p>(b) The Federal awarding agency may require adequate fidelity bond coverage where the non-Federal entity lacks sufficient coverage to protect the Federal government's interest.</p> <p>(c) Where bonds are required in the situations described above, the bonds must be obtained from companies holding certificates of authority as acceptable sureties, as prescribed in 31 CFR Part 223, "Surety Companies Doing Business with the United States."</p> |
| <p><b>§74.30 Purpose of property standards.</b><br/>Sections 74.31 through 74.37 establish uniform standards governing management and disposition of property furnished by ED whose cost was charged to a project supported by a Federal award. Recipients shall observe these standards under awards. The Secretary does not impose additional requirements, unless specifically required by Federal statute. The recipient may use its own property management standards and procedures provided it observes the provisions of §§74.31 through 74.37.</p> |  |
| <p><b>§74.31 Insurance coverage.</b><br/>Recipients shall, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired with Federal funds as provided to property owned by the recipient. Federally-owned property need not be insured unless required by the terms and conditions of the award.</p>   | <p><b>200.310 Insurance coverage.</b><br/>The non-Federal entity must, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired or improved with Federal funds as provided to property owned by the non-Federal entity. Federally-owned property need not be insured unless required by the terms and conditions of the Federal award.</p>   |
| <p><b>§74.32 Real property.</b><br/>The Secretary prescribes requirements for recipients concerning the use and disposition of real property acquired in whole or in part under awards. Unless otherwise provided by statute, the minimum requirements provide</p>  | <p><b>§200.311 Real property.</b></p>  |

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| <p>the following:</p> <p>(a) Title to real property must vest in the recipient subject to the condition that the recipient shall use the real property for the authorized purpose of the project as long as it is needed and shall not encumber the property without approval of the Secretary.</p> <p>(b) The recipient shall obtain written approval by the Secretary for the use of real property in other federally-sponsored projects when the recipient determines that the property is no longer needed for the purpose of the original project. Use in other projects shall be limited to those under federally-sponsored projects (i.e., awards) that have purposes consistent with those authorized for support by the Secretary.</p> <p>(c) When the real property is no longer needed as provided in paragraphs (a) and (b) of this section, the recipient shall request disposition instructions from ED or its successor Federal awarding agency. The Secretary observes one or more of the following disposition instructions:</p> <p>(1) The recipient may be permitted to retain title without further obligation to the Federal Government after it compensates the Federal Government for that percentage of the current fair market value of the property attributable to the Federal participation in the project.</p> <p>(2) The recipient may be directed to sell the property under guidelines provided by the Secretary and pay the Federal Government for that percentage of the current fair market value of the property attributable to the Federal participation in the project (after</p> | <p>(a) <i>Title</i>. Subject to the obligations and conditions set forth in this section, title to real property acquired or improved under a Federal award will vest upon acquisition in the non-Federal entity.</p> <p>(b) <i>Use</i>. Except as otherwise provided by Federal statutes or by the Federal awarding agency, real property will be used for the originally authorized purpose as long as needed for that purpose, during which time the non-Federal entity must not dispose of or encumber its title or other interests.</p> <p>(c) <i>Disposition</i>. When real property is no longer needed for the originally authorized purpose, the non-Federal entity must obtain disposition instructions from the Federal awarding agency or pass-through entity. The instructions must provide for one of the following alternatives:</p> <p>(1) Retain title after compensating the Federal awarding agency. The amount paid to the Federal awarding agency will be computed by applying the Federal awarding agency's percentage of participation in the cost of the original purchase (and costs of any improvements) to the fair market value of the property. However, in those situations where the non-Federal entity is disposing of real property acquired or improved with a Federal award and acquiring replacement real property under the same Federal award, the net proceeds from the disposition may be used as an offset to the cost of the replacement property.</p> <p>(2) Sell the property and compensate the Federal</p> |

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| <p>deducting actual and reasonable selling and fix-up expenses, if any, from the sales proceeds). When the recipient is authorized or required to sell the property, proper sales procedures must be established that provide for competition to the extent practicable and result in the highest possible return.</p> <p>(3) The recipient may be directed to transfer title to the property to the Federal Government or to an eligible third party. The recipient is entitled to compensation for its attributable percentage of the current fair market value of the property.</p>   | <p>awarding agency. The amount due to the Federal awarding agency will be calculated by applying the Federal awarding agency's percentage of participation in the cost of the original purchase (and cost of any improvements) to the proceeds of the sale after deduction of any actual and reasonable selling and fixing-up expenses. If the Federal award has not been closed out, the net proceeds from sale may be offset against the original cost of the property. When the non-Federal entity is directed to sell property, sales procedures must be followed that provide for competition to the extent practicable and result in the highest possible return.</p> <p>(3) Transfer title to the Federal awarding agency or to a third party designated/approved by the Federal awarding agency. The non-Federal entity is entitled to be paid an amount calculated by applying the non-Federal entity's percentage of participation in the purchase of the real property (and cost of any improvements) to the current fair market value of the property.</p>  |
| <p><b>§74.33 Federally-owned and exempt property.</b></p> <p>(a) <i>Federally-owned property.</i> (1) Title to federally-owned property remains vested in the Federal Government. Recipients shall submit annually an inventory listing of federally-owned property in their custody to the Secretary. Upon completion of the award or when the property is no longer needed, the recipient shall report the property to the Secretary for further ED utilization.</p> <p>(2) If ED has no further need for the property, it shall be declared excess and reported to the General Services Administration, unless the Secretary has statutory authority to dispose of the property by alternative methods (e.g., the authority provided by the Federal Technology Transfer Act (15 U.S.C. 3710 (I)) to donate research equipment to educational and non-profit organizations in accordance with E.O. 12821—Improving Mathematics and Science Education in Support of the National Education Goals. Appropriate instructions shall be issued to</p> | <p><b>§200.312 Federally-owned and exempt property.</b></p> <p>(a) Title to federally-owned property remains vested in the Federal Government. The non-Federal entity must submit annually an inventory listing of federally-owned property in its custody to the Federal awarding agency. Upon completion of the Federal award or when the property is no longer needed, the non-Federal entity must report the property to the Federal awarding agency for further Federal agency utilization.</p> <p>(b) If the Federal awarding agency has no further need for the property, it must declare the property excess and report it for disposal to the appropriate Federal disposal authority, unless the Federal awarding agency has statutory authority to dispose of the property by alternative methods (e.g., the authority provided by the Federal Technology Transfer Act (15 U.S.C. 3710 (i)) to donate research equipment to educational and non-profit organizations in accordance with Executive Order 12999, "Educational Technology: Ensuring Opportunity for All Children in the Next Century."). The Federal awarding agency must issue appropriate instructions to the non-Federal entity.</p> <p>(c) Exempt federally-owned property means property acquired under a Federal award where the Federal</p> |

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| <p>the recipient by the Secretary.</p> <p>(b) <i>Exempt property.</i> When statutory authority exists, the Secretary may vest title to property acquired with Federal funds in the recipient without further obligation to the Federal Government and under conditions the Secretary considers appropriate. This property is “exempt property.” Should the Secretary not establish conditions, title to exempt property upon acquisition vests in the recipient without further obligation to the Federal Government.</p>   | <p>awarding agency has chosen to vest title to the property to the non-Federal entity without further obligation to the Federal Government, based upon the explicit terms and conditions of the Federal award. The Federal awarding agency may exercise this option when statutory authority exists. Absent statutory authority and specific terms and conditions of the Federal award, title to exempt federally-owned property acquired under the Federal award remains with the Federal Government.</p>  |
| <p><b>§74.34 Equipment.</b></p> <p>(a) Title to equipment acquired by a recipient with Federal funds shall vest in the recipient, subject to conditions of this section.</p> <p>(b) The recipient may not use equipment acquired with Federal funds to provide services to non-Federal outside organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute, for as long as the Federal Government retains an interest in the equipment.</p> <p>(c) 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 may not encumber the property without approval of the Secretary. When no longer needed for</p> | <p><b>§200.313 Equipment.</b></p> <p>See also §200.439 Equipment and other capital expenditures.</p> <p>(a) <i>Title.</i> Subject to the obligations and conditions set forth in this section, title to equipment acquired under a Federal award will vest upon acquisition in the non-Federal entity. Unless a statute specifically authorizes the Federal agency to vest title in the non-Federal entity without further obligation to the Federal Government, and the Federal agency elects to do so, the title must be a conditional title. Title must vest in the non-Federal entity subject to the following conditions:</p> <p>(1) Use the equipment for the authorized purposes of the project during the period of performance, or until the property is no longer needed for the purposes of the project.</p> <p>(2) Not encumber the property without approval of the Federal awarding agency or pass-through entity.</p> <p>(3) Use and dispose of the property in accordance with paragraphs (b), (c) and (e) of this section.</p> <p>(b) A state must use, manage and dispose of equipment acquired under a Federal award by the state in accordance with state laws and procedures. Other non-Federal entities must follow paragraphs (c) through (e) of this section.</p> <p>(c) <i>Use.</i> (1) Equipment must be used by the non-Federal entity in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by the Federal award, and the non-Federal entity must not encumber the property without prior approval of the Federal awarding agency. When no longer needed for the</p> |

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| <p>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:</p> <p>(1) Activities sponsored by the Federal awarding agency which funded the original project; and then</p> <p>(2) Activities sponsored by other Federal awarding agencies.</p> <p>(d) During the time that equipment is used on the project or program for which it was acquired, the recipient shall make it available for use on other projects or programs if other use will not interfere with the work on the project or program for which the equipment was originally acquired. First preference for other use shall be given to other projects or programs sponsored by the Federal awarding agency that financed the equipment; second preference shall be given to projects or programs sponsored by other Federal awarding agencies. If the equipment is owned by the Federal Government, use on other activities not sponsored by the Federal Government shall be permissible if authorized by the Federal awarding agency. User charges shall be treated as program income.</p> <p>(e) When acquiring replacement equipment, the recipient may use the equipment to be replaced as trade-in or sell the equipment and use the proceeds to offset the costs of the replacement equipment subject to the approval of the Secretary.</p> <p>(f) The recipient's property management standards for equipment acquired with Federal funds and federally-owned equipment shall include all of the following:</p> <p>(1) Equipment records shall be maintained accurately and shall include the following information:</p> | <p>original program or project, the equipment may be used in other activities supported by the Federal awarding agency, in the following order of priority:</p> <p>(i) Activities under a Federal award from the Federal awarding agency which funded the original program or project, then</p> <p>(ii) Activities under Federal awards from other Federal awarding agencies. This includes consolidated equipment for information technology systems.</p> <p>(2) During the time that equipment is used on the project or program for which it was acquired, the non-Federal entity must also make equipment available for use on other projects or programs currently or previously supported by the Federal Government, provided that such use will not interfere with the work on the projects or program for which it was originally acquired. First preference for other use must be given to other programs or projects supported by Federal awarding agency that financed the equipment and second preference must be given to programs or projects under Federal awards from other Federal awarding agencies. Use for non-federally-funded programs or projects is also permissible. User fees should be considered if appropriate.</p> <p>(3) Notwithstanding the encouragement in §200.307 Program income to earn program income, the non-Federal entity must not use equipment acquired with the Federal award to provide services for a fee that is less than private companies charge for equivalent services unless specifically authorized by Federal statute for as long as the Federal Government retains an interest in the equipment.</p> <p>(4) When acquiring replacement equipment, the non-Federal entity may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property.</p> <p>(d) <i>Management requirements.</i> Procedures for managing equipment (including replacement equipment), whether acquired in whole or in part under a Federal award, until disposition takes place will, as a minimum, meet the following requirements:</p> <p>(1) Property records must be maintained that include a description of the property, a serial number or other</p> |



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| <p>(i) A description of the equipment.</p> <p>(ii) Manufacturer's serial number, model number, Federal stock number, national stock number, or other identification number.</p> <p>(iii) Source of the equipment, including the award number.</p> <p>(iv) Whether title vests in the recipient or the Federal Government.</p> <p>(v) Acquisition date (or date received, if the equipment was furnished by the Federal Government) and cost.</p> <p>(vi) Information from which one can calculate the percentage of Federal participation in the cost of the equipment (not applicable to equipment furnished by the Federal Government).</p> <p>(vii) Location and condition of the equipment and the date the information was reported.</p> <p>(viii) Unit acquisition cost.</p> <p>(ix) Ultimate disposition data, including date of disposal and sales price or the method used to determine current fair market value where a recipient compensates ED for its share.</p> <p>(2) Equipment owned by the Federal Government must be identified to indicate Federal ownership.</p> <p>(3) A physical inventory of equipment must be taken and the results reconciled with the equipment records at least once every two years. Any differences between quantities determined by the physical inspection and those shown in the accounting records must be investigated to determine the causes of the difference. The recipient shall, in connection with the inventory, verify the existence, current utilization, and continued need for the equipment.</p> <p>(4) A control system must be in effect to insure adequate safeguards to prevent loss, damage, or theft of the equipment. Any loss, damage, or theft of equipment shall be investigated and fully documented; if the equipment was owned by the Federal Government, the recipient shall promptly</p> | <p>identification number, the source of funding for the property (including the FAIN), who holds title, the acquisition date, and cost of the property, percentage of Federal participation in the project costs for the Federal award under which the property was acquired, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.</p> <p>(2) A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.</p> <p>(3) A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft must be investigated.</p> <p>(4) Adequate maintenance procedures must be developed to keep the property in good condition.</p> <p>(5) If the non-Federal entity is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return.</p> |

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| <p>notify the Secretary.</p> <p>(5) Adequate maintenance procedures must be implemented to keep the equipment in good condition.</p> <p>(6) Where the recipient is authorized or required to sell the equipment, proper sales procedures must be established which provide for competition to the extent practicable and result in the highest possible return.</p> <p>(g) When the recipient no longer needs the equipment, the equipment may be used for other activities in accordance with the following standards:</p> <p>(1) For equipment with a current per unit fair market value of \$5000 or more, the recipient may retain the equipment for other uses provided that compensation is made to ED or its successor. The amount of compensation shall be computed by applying the percentage of Federal participation in the cost of the original project or program to the current fair market value of the equipment.</p> <p>(2) If the recipient has no need for the equipment, the recipient shall request disposition instructions from the Secretary. The Secretary shall determine whether the equipment can be used to meet ED requirements. If no requirement exists within ED, the availability of the equipment shall be reported to the General Services Administration by the Secretary to determine whether a requirement for the equipment exists in other Federal agencies. The Secretary issues instructions to the recipient no later than 120 calendar days after the recipient's request and the following procedures govern:</p> | <p>(e) <i>Disposition.</i> When original or replacement equipment acquired under a Federal award is no longer needed for the original project or program or for other activities currently or previously supported by a Federal awarding agency, except as otherwise provided in Federal statutes, regulations, or Federal awarding agency disposition instructions, the non-Federal entity must request disposition instructions from the Federal awarding agency if required by the terms and conditions of the Federal award. Disposition of the equipment will be made as follows, in accordance with Federal awarding agency disposition instructions:</p> <p>(1) Items of equipment with a current per unit fair market value of \$5,000 or less may be retained, sold or otherwise disposed of with no further obligation to the Federal awarding agency.</p> <p>(2) Except as provided in §200.312 Federally-owned and exempt property, paragraph (b), or if the Federal awarding agency fails to provide requested disposition instructions within 120 days, items of equipment with a current per-unit fair-market value in excess of \$5,000 may be retained by the non-Federal entity or sold. The Federal awarding agency is entitled to an amount calculated by multiplying the current market value or proceeds from sale by the Federal awarding agency's percentage of participation in the cost of the original purchase. If the equipment is sold, the Federal awarding agency may permit the non-Federal entity to deduct and retain from the Federal share \$500 or ten percent of the proceeds, whichever is less, for its selling and handling expenses.</p> <p>(3) The non-Federal entity may transfer title to the property to the Federal Government or to an eligible third party provided that, in such cases, the non-Federal entity must be entitled to compensation for its attributable percentage of the current fair market value of the property.</p> <p>(4) In cases where a non-Federal entity fails to take appropriate disposition actions, the Federal awarding agency may direct the non-Federal entity to take disposition actions.</p> |

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| <p>(i) If so instructed or if disposition instructions are not issued within 120 calendar days after the recipient's request, the recipient shall sell the equipment and reimburse ED an amount computed by applying to the sales proceeds the percentage of Federal participation in the cost of the original project or program. However, the recipient shall be permitted to deduct and retain from the Federal share \$500 or ten percent of the proceeds, whichever is less, for the recipient's selling and handling expenses.</p> <p>(ii) If the recipient is instructed to ship the equipment elsewhere, the recipient is reimbursed by ED by an amount which is computed by applying the percentage of the recipient's participation in the cost of the original project or program to the current fair market value of the equipment, plus any reasonable shipping or interim storage costs incurred.</p> <p>(iii) If the recipient is instructed to otherwise dispose of the equipment, the recipient is reimbursed by ED for costs incurred in its disposition.</p> <p>(iv) The Secretary may reserve the right to transfer the title to the Federal Government or to a third party named by the Federal Government when the third party is otherwise eligible under existing statutes. This transfer shall be subject to the following standards:</p> <p>(A) The equipment must be appropriately identified in the award or otherwise made known to the recipient in writing.</p> <p>(B) The Secretary issues disposition instructions within 120 calendar days after receipt of a final inventory. The final inventory must list all equipment acquired with grant funds and federally-owned equipment. If the Secretary does not issue disposition instructions within the 120 calendar day period, the recipient shall apply the standards of this section, as appropriate.</p> |                |

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| (C) When the Secretary exercises the right to take title, the equipment is subject to the provisions for federally-owned equipment.   |   |
| <p><b>§74.35 Supplies and other expendable property.</b></p> <p>(a) 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.</p> <p>(b) The recipient may not use supplies acquired with Federal funds to provide services to non-Federal outside organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute as long as the Federal Government retains an interest in the supplies.</p> | <p><b>§200.314 Supplies.</b></p> <p>See also §200.453 Materials and supplies costs, including costs of computing devices.</p> <p>(a) Title to supplies will vest in the non-Federal entity 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 Federal award, the non-Federal entity must retain the supplies for use on other activities or sell them, but must, in either case, compensate the Federal government for its share. The amount of compensation must be computed in the same manner as for equipment. See §200.313 Equipment, paragraph (e)(2) for the calculation methodology.</p> <p>(b) As long as the Federal government retains an interest in the supplies, the non-Federal entity must not use supplies acquired under a Federal award to provide services to other organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute.</p> |
| <p><b>§74.36 Intangible property.</b></p> <p>(a) The recipient may copyright any work that is subject to copyright and was developed, or for which ownership was purchased, under an award. ED and any other Federal awarding agency reserve a royalty-free, nonexclusive,</p>  | <p><b>§200.315 Intangible property.</b></p> <p>(a) Title to intangible property (see §200.59 Intangible property) acquired under a Federal award vests upon acquisition in the non-Federal entity. The non-Federal entity must use that property for the originally-authorized purpose, and must not encumber the property without approval of the Federal awarding agency. When no longer needed for the originally authorized purpose, disposition of the intangible property must occur in accordance with the provisions in §200.313 Equipment paragraph (e).</p> <p>(b) The non-Federal entity may copyright any work that is subject to copyright and was developed, or for which ownership was acquired, under a Federal award. The Federal awarding agency reserves a royalty-free, nonexclusive and irrevocable right to reproduce,</p>  |

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| <p>and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so.</p> <p>(b) Recipients are subject to applicable regulations governing patents and inventions, including government-wide regulations issued by the Department of Commerce at 37 CFR Part 401—Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements.</p> <p>(c) The Federal Government has the right to:</p> <p>(1) Obtain, reproduce, publish or otherwise use the data first produced under an award; and</p> <p>(2) Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.</p> <p>(d)(1) In addition, in response to a Freedom of Information Act (FOIA) request for research data relating to published research findings produced under an award that were used by the Federal Government in developing an agency action that has the force and effect of law, ED shall request, and the recipient shall provide, within a reasonable time, the research data so that they can be made available to the public through the procedures established under the FOIA. If ED obtains the research data solely in response to a FOIA request, the agency may charge the requester a reasonable fee equaling the full incremental cost of obtaining the research data. This fee should reflect costs incurred by the agency, the recipient, and applicable subrecipients. This fee is in addition to any fees the agency may assess under the FOIA (5 U.S.C. 552(a)(4)(A)).</p> <p>(2) The following definitions apply for purposes of this paragraph (d):</p> | <p>publish, or otherwise use the work for Federal purposes, and to authorize others to do so.</p> <p>(c) The non-Federal entity is subject to applicable regulations governing patents and inventions, including governmentwide regulations issued by the Department of Commerce at 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Awards, Contracts and Cooperative Agreements.”</p> <p>(d) The Federal Government has the right to:</p> <p>(1) Obtain, reproduce, publish, or otherwise use the data produced under a Federal award; and</p> <p>(2) Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.</p> <p>(e) Freedom of Information Act (FOIA).</p> <p>(1) In response to a Freedom of Information Act (FOIA) request for research data relating to published research findings produced under a Federal award that were used by the Federal Government in developing an agency action that has the force and effect of law, the Federal awarding agency must request, and the non-Federal entity must provide, within a reasonable time, the research data so that they can be made available to the public through the procedures established under the FOIA. If the Federal awarding agency obtains the research data solely in response to a FOIA request, the Federal awarding agency may charge the requester a reasonable fee equaling the full incremental cost of obtaining the research data. This fee should reflect costs incurred by the Federal agency and the non-Federal entity. This fee is in addition to any fees the Federal awarding agency may assess under the FOIA (5 U.S.C. 552(a)(4)(A)).</p> <p>(2) Published research findings means when:</p> <p>(i) Research findings are published in a peer-reviewed scientific or technical journal; or</p> <p>(ii) A Federal agency publicly and officially cites the research findings in support of an agency action that has the force and effect of law. “Used by the Federal Government in developing an agency action that has the force and effect of law” is defined as when an</p> |

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| <p>(i) <i>Research data</i> 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). <i>Research data</i> also do not include:</p> <p>(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</p> <p>(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.</p> <p>(ii) <i>Published</i> is defined as either when:</p> <p>(A) Research findings are published in a peer-reviewed scientific or technical journal; or</p> <p>(B) A Federal agency publicly and officially cites the research findings in support of an agency action that has the force and effect of law.</p> <p>(iii) <i>Used by the Federal Government in developing an agency action that has the force and effect of law</i> is defined as when an agency publicly and officially cites the research findings in support of an agency action that has the force and effect of law.</p> <p>(e) Title to intangible property and debt instruments acquired under an award or subaward vests upon acquisition in the</p> | <p>agency publicly and officially cites the research findings in support of an agency action that has the force and effect of law.</p> <p>(3) Research data means the recorded factual material commonly accepted in the scientific community as necessary to validate research findings, but not any of the following: preliminary analyses, drafts of scientific papers, plans for future research, peer reviews, or communications with colleagues. This “recorded” material excludes physical objects (e.g., laboratory samples). Research data also do not include:</p> <p>(i) Trade secrets, commercial information, materials necessary to be held confidential by a researcher until they are published, or similar information which is protected under law; and</p> <p>(ii) Personnel and medical information and similar information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, such as information that could be used to identify a particular person in a research study.</p> |

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| <p>recipient. The recipient shall use that property for the originally-authorized purpose, and the recipient shall not encumber the property without approval of the Secretary. When no longer needed for the originally authorized purpose, disposition of the intangible property shall occur in accordance with the provisions of §74.34(g).</p>  |  |
| <p><b>§74.37 Property trust relationship.</b><br/>Real property, equipment, intangible property, and debt instruments that are acquired or improved with Federal funds must be held in trust by the recipient as trustee for the beneficiaries of the project or program under which the property was acquired or improved. The Secretary 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.</p> | <p><b>§200.316 Property trust relationship.</b><br/>Real property, equipment, and intangible property, that are acquired or improved with a Federal award must be held in trust by the non-Federal entity as trustee for the beneficiaries of the project or program under which the property was acquired or improved. The Federal awarding agency may require the non-Federal entity to record liens or other appropriate notices of record to indicate that personal or real property has been acquired or improved with a Federal award and that use and disposition conditions apply to the property.</p> |
| <p><b>§74.30 Purpose of property standards.</b><br/>Sections 74.31 through 74.37 establish uniform standards governing management and disposition of property furnished by ED whose cost was charged to a project supported by a Federal award. Recipients shall observe these standards under awards. The Secretary does not impose additional requirements, unless specifically required by Federal statute. The recipient may use its own property management standards and procedures provided it observes the provisions of §§74.31 through 74.37.</p>                            |  |
| <p><b>§74.31 Insurance coverage.</b><br/>Recipients shall, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired with Federal funds as provided to property owned by the recipient. Federally-owned property need not be insured unless required by the terms and conditions of the award.</p>  | <p><b>200.310 Insurance coverage.</b><br/>The non-Federal entity must, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired or improved with Federal funds as provided to property owned by the non-Federal entity. Federally-owned property need not be insured unless required by the terms and conditions of the Federal award.</p>   |



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| <p><b>§74.32 Real property.</b><br/>The Secretary prescribes requirements for recipients concerning the use and disposition of real property acquired in whole or in part under awards. Unless otherwise provided by statute, the minimum requirements provide the following:</p> <p>(a) Title to real property must vest in the recipient subject to the condition that the recipient shall use the real property for the authorized purpose of the project as long as it is needed and shall not encumber the property without approval of the Secretary.</p> <p>(b) The recipient shall obtain written approval by the Secretary for the use of real property in other federally-sponsored projects when the recipient determines that the property is no longer needed for the purpose of the original project. Use in other projects shall be limited to those under federally-sponsored projects (i.e., awards) that have purposes consistent with those authorized for support by the Secretary.</p> <p>(c) When the real property is no longer needed as provided in paragraphs (a) and (b) of this section, the recipient shall request disposition instructions from ED or its successor Federal awarding agency. The Secretary observes one or more of the following disposition instructions:</p> <p>(1) The recipient may be permitted to retain title without further obligation to the Federal Government after it compensates the Federal Government for that percentage of the current fair market value of the property attributable to the Federal participation in the project.</p> <p>(2) The recipient may be directed to sell the property under guidelines provided by the</p> | <p><b>§200.311 Real property.</b></p> <p>(a) <i>Title.</i> Subject to the obligations and conditions set forth in this section, title to real property acquired or improved under a Federal award will vest upon acquisition in the non-Federal entity.</p> <p>(b) <i>Use.</i> Except as otherwise provided by Federal statutes or by the Federal awarding agency, real property will be used for the originally authorized purpose as long as needed for that purpose, during which time the non-Federal entity must not dispose of or encumber its title or other interests.</p> <p>(c) <i>Disposition.</i> When real property is no longer needed for the originally authorized purpose, the non-Federal entity must obtain disposition instructions from the Federal awarding agency or pass-through entity. The instructions must provide for one of the following alternatives:</p> <p>(1) Retain title after compensating the Federal awarding agency. The amount paid to the Federal awarding agency will be computed by applying the Federal awarding agency's percentage of participation in the cost of the original purchase (and costs of any improvements) to the fair market value of the property. However, in those situations where non-Federal entity is disposing of real property acquired or improved with a Federal award and acquiring replacement real property under the same Federal award, the net proceeds from the disposition may be used as an offset to the cost of the replacement property.</p> <p>(2) Sell the property and compensate the Federal awarding agency. The amount due to the Federal</p> |

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| <p>Secretary and pay the Federal Government for that percentage of the current fair market value of the property attributable to the Federal participation in the project (after deducting actual and reasonable selling and fix-up expenses, if any, from the sales proceeds). When the recipient is authorized or required to sell the property, proper sales procedures must be established that provide for competition to the extent practicable and result in the highest possible return.</p> <p>(3) The recipient may be directed to transfer title to the property to the Federal Government or to an eligible third party. The recipient is entitled to compensation for its attributable percentage of the current fair market value of the property.</p>   | <p>awarding agency will be calculated by applying the Federal awarding agency's percentage of participation in the cost of the original purchase (and cost of any improvements) to the proceeds of the sale after deduction of any actual and reasonable selling and fixing-up expenses. If the Federal award has not been closed out, the net proceeds from sale may be offset against the original cost of the property. When non-Federal entity is directed to sell property, sales procedures must be followed that provide for competition to the extent practicable and result in the highest possible return.</p> <p>(3) Transfer title to the Federal awarding agency or to a third party designated/approved by the Federal awarding agency. The non-Federal entity is entitled to be paid an amount calculated by applying the non-Federal entity's percentage of participation in the purchase of the real property (and cost of any improvements) to the current fair market value of the property.</p>  |
| <p><b>§74.33 Federally-owned and exempt property.</b></p> <p>(a) <i>Federally-owned property.</i> (1) Title to federally-owned property remains vested in the Federal Government. Recipients shall submit annually an inventory listing of federally-owned property in their custody to the Secretary. Upon completion of the award or when the property is no longer needed, the recipient shall report the property to the Secretary for further ED utilization.</p> <p>(2) If ED has no further need for the property, it shall be declared excess and reported to the General Services Administration, unless the Secretary has statutory authority to dispose of the property by alternative methods (e.g., the authority provided by the Federal Technology Transfer Act (15 U.S.C. 3710 (I)) to donate research equipment to educational and non-profit organizations in accordance with E.O. 12821—Improving Mathematics and Science Education in Support of the National Education Goals. Appropriate instructions shall be issued to the recipient by the Secretary.</p> | <p><b>§200.312 Federally-owned and exempt property.</b></p> <p>(a) Title to federally-owned property remains vested in the Federal government. The non-Federal entity must submit annually an inventory listing of federally-owned property in its custody to the Federal awarding agency. Upon completion of the Federal award or when the property is no longer needed, the non-Federal entity must report the property to the Federal awarding agency for further Federal agency utilization.</p> <p>(b) If the Federal awarding agency has no further need for the property, it must declare the property excess and report it for disposal to the appropriate Federal disposal authority, unless the Federal awarding agency has statutory authority to dispose of the property by alternative methods (e.g., the authority provided by the Federal Technology Transfer Act (15 U.S.C. 3710 (i)) to donate research equipment to educational and non-profit organizations in accordance with Executive Order 12999, "Educational Technology: Ensuring Opportunity for All Children in the Next Century."). The Federal awarding agency must issue appropriate instructions to the non-Federal entity.</p> <p>(c) Exempt federally-owned property means property</p> |

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| <p>(b) <i>Exempt property.</i> When statutory authority exists, the Secretary may vest title to property acquired with Federal funds in the recipient without further obligation to the Federal Government and under conditions the Secretary considers appropriate. This property is “exempt property.” Should the Secretary not establish conditions, title to exempt property upon acquisition vests in the recipient without further obligation to the Federal Government.</p>  | <p>acquired under a Federal award the title based upon the explicit terms and conditions of the Federal award that indicate the Federal awarding agency has chosen to vest in the non-Federal entity without further obligation to the Federal government or under conditions the Federal agency considers appropriate. The Federal awarding agency may exercise this option when statutory authority exists. Absent statutory authority and specific terms and conditions of the Federal award, title to exempt federally-owned property acquired under the Federal award remains with the Federal government.</p>   |
| <p><b>§74.34 Equipment.</b></p> <p>(a) Title to equipment acquired by a recipient with Federal funds shall vest in the recipient, subject to conditions of this section.</p> <p>(b) The recipient may not use equipment acquired with Federal funds to provide services to non-Federal outside organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute, for as long as the Federal Government retains an interest in the equipment.</p> <p>(c) 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 may not encumber the property without approval of the Secretary. 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:</p> | <p><b>§200.313 Equipment.</b></p> <p>See also §200.439 Equipment and other capital expenditures.</p> <p>(a) <i>Title.</i> Subject to the obligations and conditions set forth in this section, title to equipment acquired under a Federal award will vest upon acquisition in the non-Federal entity. Unless a statute specifically authorizes the Federal agency to vest title in the non-Federal entity without further obligation to the Federal government, and the Federal agency elects to do so, the title must be a conditional title. Title must vest in the non-Federal entity subject to the following conditions:</p> <p>(1) Use the equipment for the authorized purposes of the project until funding for the project ceases, or until the property is no longer needed for the purposes of the project.</p> <p>(2) Not encumber the property without approval of the Federal awarding agency or pass-through entity.</p> <p>(3) Use and dispose of the property in accordance with paragraphs (b), (c) and (e) of this section.</p> <p>(b) A state must use, manage and dispose of equipment acquired under a Federal award by the state in accordance with state laws and procedures. Other non-Federal entities must follow paragraphs (c) through (e) of this section.</p> <p>(c) <i>Use.</i> (1) Equipment must be used by the non-Federal entity in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by the Federal award, and the non-Federal entity must not encumber the property without prior approval of the Federal awarding agency. When no longer needed for the</p> |

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| <p>(1) Activities sponsored by the Federal awarding agency which funded the original project; and then</p> <p>(2) Activities sponsored by other Federal awarding agencies.</p> <p>(d) During the time that equipment is used on the project or program for which it was acquired, the recipient shall make it available for use on other projects or programs if other use will not interfere with the work on the project or program for which the equipment was originally acquired. First preference for other use shall be given to other projects or programs sponsored by the Federal awarding agency that financed the equipment; second preference shall be given to projects or programs sponsored by other Federal awarding agencies. If the equipment is owned by the Federal Government, use on other activities not sponsored by the Federal Government shall be permissible if authorized by the Federal awarding agency. User charges shall be treated as program income.</p> <p>(e) When acquiring replacement equipment, the recipient may use the equipment to be replaced as trade-in or sell the equipment and use the proceeds to offset the costs of the replacement equipment subject to the</p> | <p>original program or project, the equipment may be used in other activities supported by the Federal awarding agency, in the following order of priority:</p> <p>(i) Activities under a Federal award from the Federal awarding agency which funded the original program or project, then</p> <p>(ii) Activities under Federal awards from other Federal awarding agencies. This includes consolidated equipment for information technology systems.</p> <p>(2) During the time that equipment is used on the project or program for which it was acquired, the non-Federal entity must also make equipment available for use on other projects or programs currently or previously supported by the Federal government, provided that such use will not interfere with the work on the projects or program for which it was originally acquired. First preference for other use must be given to other programs or projects supported by Federal awarding agency that financed the equipment and second preference must be given to programs or projects under Federal awards from other Federal awarding agencies. Use for non-federally-funded programs or projects is also permissible. User fees should be considered if appropriate.</p> <p>(3) Notwithstanding the encouragement in §200.307 Program income to earn program income, the non-Federal entity must not use equipment acquired with the Federal award to provide services for a fee that is less than private companies charge for equivalent services unless specifically authorized by Federal statute for as long as the Federal government retains an interest in the equipment.</p> <p>(4) When acquiring replacement equipment, the non-Federal entity may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property.</p> <p>(d) <i>Management requirements.</i> Procedures for managing equipment (including replacement equipment), whether acquired in whole or in part under a Federal award, until disposition takes place will, as a minimum, meet the following requirements:</p> <p>(1) Property records must be maintained that include a description of the property, a serial number or other identification number, the source of funding for the property (including the FAIN), who holds title, the</p> |

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| <p>approval of the Secretary.</p> <p>(f) The recipient's property management standards for equipment acquired with Federal funds and federally-owned equipment shall include all of the following:</p> <p>(1) Equipment records shall be maintained accurately and shall include the following information:</p> <p>(i) A description of the equipment.</p> <p>(ii) Manufacturer's serial number, model number, Federal stock number, national stock number, or other identification number.</p> <p>(iii) Source of the equipment, including the award number.</p> <p>(iv) Whether title vests in the recipient or the Federal Government.</p> <p>(v) Acquisition date (or date received, if the equipment was furnished by the Federal Government) and cost.</p> <p>(vi) Information from which one can calculate the percentage of Federal participation in the cost of the equipment (not applicable to equipment furnished by the Federal Government).</p> <p>(vii) Location and condition of the equipment and the date the information was reported.</p> <p>(viii) Unit acquisition cost.</p> <p>(ix) Ultimate disposition data, including date of disposal and sales price or the method used to determine current fair market value where a recipient compensates ED for its share.</p> <p>(2) Equipment owned by the Federal Government must be identified to indicate Federal ownership.</p> <p>(3) A physical inventory of equipment must be taken and the results reconciled with the equipment records at least once every two years. Any differences between quantities determined by the physical inspection and those shown in the accounting records must be investigated to determine the causes of the difference. The recipient shall, in</p> | <p>acquisition date, and cost of the property, percentage of Federal participation in the project costs for the Federal award under which the property was acquired, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.</p> <p>(2) A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.</p> |

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| <p>connection with the inventory, verify the existence, current utilization, and continued need for the equipment.</p> <p>(4) A control system must be in effect to insure adequate safeguards to prevent loss, damage, or theft of the equipment. Any loss, damage, or theft of equipment shall be investigated and fully documented; if the equipment was owned by the Federal Government, the recipient shall promptly notify the Secretary.</p> <p>(5) Adequate maintenance procedures must be implemented to keep the equipment in good condition.</p> <p>(6) Where the recipient is authorized or required to sell the equipment, proper sales procedures must be established which provide for competition to the extent practicable and result in the highest possible return.</p> <p>(g) When the recipient no longer needs the equipment, the equipment may be used for other activities in accordance with the following standards:</p> <p>(1) For equipment with a current per unit fair market value of \$5000 or more, the recipient may retain the equipment for other uses provided that compensation is made to ED or its successor. The amount of compensation shall be computed by applying the percentage of Federal participation in the cost of the original project or program to the current fair market value of the equipment.</p> <p>(2) If the recipient has no need for the equipment, the recipient shall request disposition instructions from the Secretary. The Secretary shall determine whether the equipment can be used to meet ED</p> | <p>(3) A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft must be investigated.</p> <p>(4) Adequate maintenance procedures must be developed to keep the property in good condition.</p> <p>(5) If the non-Federal entity is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return.</p> <p>(e) <i>Disposition.</i> When original or replacement equipment acquired under a Federal award is no longer needed for the original project or program or for other activities currently or previously supported by a Federal awarding agency, except as otherwise provided in Federal statutes, regulations, or Federal awarding agency disposition instructions, the non-Federal entity must request disposition instructions from the Federal awarding agency if required by the terms and conditions of the Federal award. Disposition of the equipment will be made as follows, in accordance with Federal awarding agency disposition instructions:</p> <p>(1) Items of equipment with a current per unit fair market value of \$5,000 or less may be retained, sold or otherwise disposed of with no further obligation to the Federal awarding agency.</p> |



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| <p>requirements. If no requirement exists within ED, the availability of the equipment shall be reported to the General Services Administration by the Secretary to determine whether a requirement for the equipment exists in other Federal agencies. The Secretary issues instructions to the recipient no later than 120 calendar days after the recipient's request and the following procedures govern:</p> <p>(i) If so instructed or if disposition instructions are not issued within 120 calendar days after the recipient's request, the recipient shall sell the equipment and reimburse ED an amount computed by applying to the sales proceeds the percentage of Federal participation in the cost of the original project or program. However, the recipient shall be permitted to deduct and retain from the Federal share \$500 or ten percent of the proceeds, whichever is less, for the recipient's selling and handling expenses.</p> <p>(ii) If the recipient is instructed to ship the equipment elsewhere, the recipient is reimbursed by ED by an amount which is computed by applying the percentage of the recipient's participation in the cost of the original project or program to the current fair market value of the equipment, plus any reasonable shipping or interim storage costs incurred.</p> <p>(iii) If the recipient is instructed to otherwise dispose of the equipment, the recipient is reimbursed by ED for costs incurred in its disposition.</p> <p>(iv) The Secretary may reserve the right to transfer the title to the Federal Government or to a third party named by the Federal Government when the third party is otherwise eligible under existing statutes. This transfer shall be subject to the following standards:</p> <p>(A) The equipment must be appropriately identified in the award or otherwise made known to the recipient in writing.</p> | <p>(2) Except as provided in §200.312 Federally-owned and exempt property, paragraph (b), or if the Federal awarding agency fails to provide requested disposition instructions within 120 days, items of equipment with a current per-unit fair-market value in excess of \$5,000 may be retained by the non-Federal entity or sold. The Federal awarding agency is entitled to an amount calculated by multiplying the current market value or proceeds from sale by the Federal awarding agency's percentage of participation in the cost of the original purchase. If the equipment is sold, the Federal awarding agency may permit the non-Federal entity to deduct and retain from the Federal share \$500 or ten percent of the proceeds, whichever is less, for its selling and handling expenses.</p> <p>(3) The non-Federal entity may transfer title to the property to the Federal Government or to an eligible third party provided that, in such cases, the non-Federal entity must be entitled to compensation for its attributable percentage of the current fair market value of the property.</p> <p>(4) In cases where a non-Federal entity fails to take appropriate disposition actions, the Federal awarding agency may direct the non-Federal entity to take disposition actions.</p> |



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| <p>(B) The Secretary issues disposition instructions within 120 calendar days after receipt of a final inventory. The final inventory must list all equipment acquired with grant funds and federally-owned equipment. If the Secretary does not issue disposition instructions within the 120 calendar day period, the recipient shall apply the standards of this section, as appropriate.</p> <p>(C) When the Secretary exercises the right to take title, the equipment is subject to the provisions for federally-owned equipment.</p>   |   |
| <p><b>§74.35 Supplies and other expendable property.</b></p> <p>(a) 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.</p> <p>(b) The recipient may not use supplies acquired with Federal funds to provide services to non-Federal outside organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute as long as the Federal Government retains an interest in the supplies.</p> | <p><b>§200.314 Supplies.</b></p> <p>See also §200.453 Materials and supplies costs, including costs of computing devices.</p> <p>(a) Title to supplies will vest in the non-Federal entity 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 Federal award, the non-Federal entity must retain the supplies for use on other activities or sell them, but must, in either case, compensate the Federal government for its share. The amount of compensation must be computed in the same manner as for equipment. See §200.313 Equipment, paragraph (e)(2) for the calculation methodology.</p> <p>(b) As long as the Federal government retains an interest in the supplies, the non-Federal entity must not use supplies acquired under a Federal award to provide services to other organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute.</p> |
| <p><b>§74.36 Intangible property.</b></p>   | <p><b>§200.315 Intangible property.</b></p> <p>(a) Title to intangible property (see §200.59 Intangible property) acquired under a Federal award vests upon acquisition in the non-Federal entity. The non-Federal entity must use that property for the originally-authorized purpose, and must not encumber the property without approval of the Federal awarding</p>   |

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| <p>(a) The recipient may copyright any work that is subject to copyright and was developed, or for which ownership was purchased, under an award. ED and any other Federal awarding agency reserve a royalty-free, nonexclusive, and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so.</p> <p>(b) Recipients are subject to applicable regulations governing patents and inventions, including government-wide regulations issued by the Department of Commerce at 37 CFR Part 401—Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements.</p> <p>(c) The Federal Government has the right to:</p> <p>(1) Obtain, reproduce, publish or otherwise use the data first produced under an award; and</p> <p>(2) Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.</p> <p>(d)(1) In addition, in response to a Freedom of Information Act (FOIA) request for research data relating to published research findings produced under an award that were used by the Federal Government in developing an agency action that has the force and effect of law, ED shall request, and the recipient shall provide, within a reasonable time, the research data so that they can be made available to the public through the procedures established under the FOIA. If ED obtains the research data solely in response to a FOIA request, the</p> | <p>agency. When no longer needed for the originally authorized purpose, disposition of the intangible property must occur in accordance with the provisions in §200.313 Equipment paragraph (e).</p> <p>(b) The non-Federal entity may copyright any work that is subject to copyright and was developed, or for which ownership was acquired, under a Federal award. The Federal awarding agency reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so.</p> <p>(c) The non-Federal entity is subject to applicable regulations governing patents and inventions, including governmentwide regulations issued by the Department of Commerce at 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Awards, Contracts and Cooperative Agreements.”</p> <p>(d) The Federal government has the right to:</p> <p>(1) Obtain, reproduce, publish, or otherwise use the data produced under a Federal award; and</p> <p>(2) Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.</p> <p>(e) Freedom of Information Act (FOIA).</p> <p>(1) In addition, in response to a Freedom of Information Act (FOIA) request for research data relating to published research findings produced under a Federal award that were used by the Federal government in developing an agency action that has the force and effect of law, the Federal awarding agency must request, and the non-Federal entity must provide, within a reasonable time, the research data so that they can be made available to the public through the procedures established under the FOIA. If the Federal awarding agency obtains the research data solely in response to a FOIA request, the Federal awarding agency may charge the requester a reasonable fee equaling the full incremental cost of obtaining the research data. This fee should reflect costs incurred by the Federal agency and the non-Federal entity. This fee is in addition to any fees the Federal awarding agency may assess under the FOIA (5 U.S.C. 552(a)(4)(A)).</p> |

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| <p>agency may charge the requester a reasonable fee equaling the full incremental cost of obtaining the research data. This fee should reflect costs incurred by the agency, the recipient, and applicable subrecipients. This fee is in addition to any fees the agency may assess under the FOIA (5 U.S.C. 552(a)(4)(A)).</p> <p>(2) The following definitions apply for purposes of this paragraph (d):</p> <p>(i) <i>Research data</i> 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). <i>Research data</i> also do not include:</p> <p>(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</p> <p>(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.</p> <p>(ii) <i>Published</i> is defined as either when:</p> <p>(A) Research findings are published in a peer-reviewed scientific or technical journal; or</p> <p>(B) A Federal agency publicly and officially cites the research findings in support of an agency action that has the force and effect of law.</p> <p>(iii) <i>Used by the Federal Government in developing an agency action that has the</i></p> | <p>(2) Published research findings means when:</p> <p>(i) Research findings are published in a peer-reviewed scientific or technical journal; or</p> <p>(ii) A Federal agency publicly and officially cites the research findings in support of an agency action that has the force and effect of law. “Used by the Federal government in developing an agency action that has the force and effect of law” is defined as when an agency publicly and officially cites the research findings in support of an agency action that has the force and effect of law.</p> <p>(3) Research data means the recorded factual material commonly accepted in the scientific community as necessary to validate research findings, but not any of the following: preliminary analyses, drafts of scientific papers, plans for future research, peer reviews, or communications with colleagues. This “recorded” material excludes physical objects (e.g., laboratory samples). Research data also do not include:</p> <p>(i) Trade secrets, commercial information, materials necessary to be held confidential by a researcher until they are published, or similar information which is protected under law; and</p> <p>(ii) Personnel and medical information and similar information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, such as information that could be used to identify a particular person in a research study.</p> |

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| <p><i>force and effect of law</i> is defined as when an agency publicly and officially cites the research findings in support of an agency action that has the force and effect of law.</p> <p>(e) Title to intangible property and debt instruments acquired under an award or subaward vests upon acquisition in the recipient. The recipient shall use that property for the originally-authorized purpose, and the recipient shall not encumber the property without approval of the Secretary. When no longer needed for the originally authorized purpose, disposition of the intangible property shall occur in accordance with the provisions of §74.34(g).</p> |  |
| <p><b>§74.37 Property trust relationship.</b> Real property, equipment, intangible property, and debt instruments that are acquired or improved with Federal funds must be held in trust by the recipient as trustee for the beneficiaries of the project or program under which the property was acquired or improved. The Secretary 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.</p>  | <p><b>§200.316 Property trust relationship.</b> Real property, equipment, and intangible property, that are acquired or improved with a Federal award must be held in trust by the non-Federal entity as trustee for the beneficiaries of the project or program under which the property was acquired or improved. The Federal awarding agency may require the non-Federal entity to record liens or other appropriate notices of record to indicate that personal or real property has been acquired or improved with a Federal award and that use and disposition conditions apply to the property.</p> |
| <p><b>§74.40 Purpose of procurement standards.</b> Sections 74.41 through 74.48 contain standards for use by recipients in establishing procedures for the procurement of supplies and other expendable property, equipment, real property, and other services with Federal funds. These standards are designed to ensure that these materials and services are obtained in an effective manner and in compliance with the provisions of applicable Federal statutes and executive orders. The Secretary does not impose additional procurement standards or requirements upon recipients, unless specifically required by Federal statute or executive order or as</p> |  |

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| authorized in §74.4 or §74.14.   |  |
| <p><b>§74.41 Recipient responsibilities.</b></p> <p>The standards contained in this section do not relieve the recipient of the contractual responsibilities arising under its contract(s). The recipient is the responsible authority, without recourse to the Secretary, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in support of an award or other agreement. This includes disputes, claims, protests of award, source evaluation, or other matters of a contractual nature. Matters concerning violation of statute are to be referred to Federal, State or local authority that may have proper jurisdiction.</p>   | <p><b>§200.318 General procurement standards.[A portion of this section]</b></p> <p>(k) The non-Federal entity alone must be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the non-Federal entity of any contractual responsibilities under its contracts. The Federal awarding agency will not substitute its judgment for that of the non-Federal entity unless the matter is primarily a Federal concern. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction.</p>   |
| <p><b>§74.42 Codes of conduct.</b></p> <p>The recipient shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts. No employee, officer, or agent shall 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. 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. The officers, employees, and agents of the recipient shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, or parties to subagreements. However, recipients may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The</p> | <p><b>§200.318 General procurement standards.[A portion of this section]</b></p> <p>(c)(1) The non-Federal entity must maintain written standards of conduct covering conflicts of interest and governing the performance of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent must participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the non-Federal entity must neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, non-Federal entities may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or</p> |

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| <p>standards of conduct shall provide for disciplinary actions to be applied for violations of these standards by officers, employees, or agents of the recipient.</p>  | <p>agents of the non-Federal entity.</p> <p>(2) If the non-Federal entity has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, the non-Federal entity must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.</p>   |
| <p><b>§74.43 Competition.</b></p> <p>All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. The recipient shall be alert to organizational conflicts of interest as well as noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations for bids or requests for proposals shall be excluded from competing for procurements. Awards must be made to the bidder or offeror whose bid or offer is responsive to the solicitation and is most advantageous to the recipient, price, quality and other factors considered. Solicitations shall clearly establish all requirements that the bidder or offeror shall fulfill in order for the bid or offer to be evaluated by the recipient. Any and all bids or offers may be rejected when it is in the recipient's interest to do so.</p> | <p><b>§200.319 Competition.</b></p> <p>(a) All procurement transactions must be conducted in a manner providing full and open competition consistent with the standards of this section. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include but are not limited to:</p> <ol style="list-style-type: none"> <li>(1) Placing unreasonable requirements on firms in order for them to qualify to do business;</li> <li>(2) Requiring unnecessary experience and excessive bonding;</li> <li>(3) Noncompetitive pricing practices between firms or between affiliated companies;</li> <li>(4) Noncompetitive contracts to consultants that are on retainer contracts;</li> <li>(5) Organizational conflicts of interest;</li> <li>(6) Specifying only a "brand name" product instead of allowing "an equal" product to be offered and describing the performance or other relevant requirements of the procurement; and</li> <li>(7) Any arbitrary action in the procurement process.</li> </ol> <p>(b) The non-Federal entity must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section</p> |



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| <p>[C. Ref. 34CFR 74.44(a)(3).]</p>   | <p>preempts state licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.</p> <p>(c) The non-Federal entity must have written procedures for procurement transactions. These procedures must ensure that all solicitations:</p> <p>(1) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equivalent” description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated; and</p> <p>(2) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.</p> <p>(d) The non-Federal entity must ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, the non-Federal entity must not preclude potential bidders from qualifying during the solicitation period.</p> |
| <p><b>§74.44 Procurement procedures.</b></p> <p>(a) All recipients shall establish written procurement procedures. These procedures must provide for, at a minimum, that—</p> | <p><b>§200.318 General procurement standards.[A portion of this section]</b></p> <p>(a) The non-Federal entity must use its own documented procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this section.</p> <p>(b) Non-Federal entities must maintain oversight to</p>   |



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| <p>(1) Recipients avoid purchasing unnecessary items;</p> <p>(2) Where appropriate, an analysis is made of lease and purchase alternatives to determine which would be the most economical and practical procurement for the Federal Government; or</p> <p>(3) Solicitations for goods and services provide for all of the following:</p> <p>(i) A clear and accurate description of the technical requirements for the material, product, or service to be procured. In competitive procurements, a description shall not contain features which unduly restrict competition.</p> <p>(ii) Requirements which the bidder/offeror must fulfill and all other factors to be used in evaluating bids or proposals.</p> <p>(iii) A description, whenever practicable, of technical requirements in terms of functions to be performed or performance required, including the range of acceptable characteristics or minimum acceptable standards.</p> <p>(iv) The specific features of brand name or equal descriptions that bidders are required to meet when these items are included in the solicitation.</p> <p>(v) The acceptance, to the extent practicable and economically feasible, of products and services dimensioned in the metric system of measurement.</p> <p>(vi) Preference, to the extent practicable and economically feasible, for products and services that conserve natural resources and protect the environment, and are energy efficient.</p> <p><b>[34 74.44(b) C. Ref. 2 CFR 200.231]</b></p> <p>(b)...</p> | <p>ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.</p> <p>(d) The non-Federal entity's procedures must avoid acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.</p> <p>(e) To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the Federal government, the non-Federal entity is encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services.</p> <p>(f) The non-Federal entity is encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.</p> <p>(g) The non-Federal entity is encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.</p> <p>(h) The non-Federal entity must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.</p> <p>(i) The non-Federal entity must maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.</p> <p>(j)(1) The non-Federal entity may use time and material type contracts only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time</p> |

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| <p>(c) The type of procuring instruments used (e.g., fixed price contracts, cost reimbursable contracts, purchase orders, and incentive contracts) shall be determined by the recipient but must be appropriate for the particular procurement and for promoting the best interest of the program or project involved. The “cost-plus-a-percentage-of-cost” or “percentage of construction cost” methods of contracting must not be used.</p> <p>(d) Contracts are made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement. Consideration is given to matters as contractor integrity, record of past performance, financial and technical resources or accessibility to other necessary resources. In certain circumstances, contracts with certain parties are restricted by E.O. 12549 (implemented by the Secretary in 34 CFR Part 85) and E.O. 12689—Debarment and Suspension.</p> <p><b>[For 74.44 (e) C. Ref. 2CFR 200.324]</b></p> <p>(e) ....</p> | <p>and material type contract means a contract whose cost to a non-Federal entity is the sum of:</p> <p>(i) The actual cost of materials; and</p> <p>(ii) Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.</p> <p>(2) Since this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, each contract must set a ceiling price that the contractor exceeds at its own risk. Further, the non-Federal entity awarding such a contract must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.</p> <p><b>§200.320 Methods of procurement to be followed.</b></p> <p>The non-Federal entity must use one of the following methods of procurement.</p> <p>(a) Procurement by micro-purchases. Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (§200.67 Micro-purchase). To the extent practicable, the non-Federal entity must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the non-Federal entity considers the price to be reasonable.</p> <p>(b) Procurement by small purchase procedures. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the Simplified Acquisition Threshold. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources.</p> <p>(c) Procurement by sealed bids (formal advertising).</p> |

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|                | <p>Bids are publicly solicited and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in paragraph (c)(1) of this section apply.</p> <p>(1) In order for sealed bidding to be feasible, the following conditions should be present:</p> <ul style="list-style-type: none"> <li>(i) A complete, adequate, and realistic specification or purchase description is available;</li> <li>(ii) Two or more responsible bidders are willing and able to compete effectively for the business; and</li> <li>(iii) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.</li> </ul> <p>(2) If sealed bids are used, the following requirements apply:</p> <ul style="list-style-type: none"> <li>(i) Bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids, for state, local, and tribal governments, the invitation for bids must be publically advertised;</li> <li>(ii) The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;</li> <li>(iii) All bids will be opened at the time and place prescribed in the invitation for bids, and for local and tribal governments, the bids must be opened publicly;</li> <li>(iv) A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and</li> <li>(v) Any or all bids may be rejected if there is a sound documented reason.</li> </ul> <p>(d) Procurement by competitive proposals. The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed</p> |

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| <p>[34 CFR 74.44(b)]</p> | <p>bids. If this method is used, the following requirements apply:</p> <p>(1) Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals must be considered to the maximum extent practical;</p> <p>(2) Proposals must be solicited from an adequate number of qualified sources;</p> <p>(3) The non-Federal entity must have a written method for conducting technical evaluations of the proposals received and for selecting recipients;</p> <p>(4) Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and</p> <p>(5) The non-Federal entity may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.</p> <p>(e) [Reserved]</p> <p>(f) Procurement by noncompetitive proposals. Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source and may be used only when one or more of the following circumstances apply:</p> <p>(1) The item is available only from a single source;</p> <p>(2) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;</p> <p>(3) The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-Federal entity; or</p> <p>(4) After solicitation of a number of sources, competition is determined inadequate.</p> <p><b>§200.321 Contracting with small and minority businesses, women's business enterprises, and labor</b></p> |

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| <p>(b) Positive efforts shall be made by recipients to utilize small businesses, minority-owned firms, and women's business enterprises, whenever possible. Recipients of Federal awards shall take all of the following steps to further this goal:</p> <p>(1) Ensure that small businesses, minority-owned firms, and women's business enterprises are used to the fullest extent practicable.</p> <p>(2) Make information on forthcoming opportunities available and arrange time frames for purchases and contracts to encourage and facilitate participation by small businesses, minority-owned firms, and women's business enterprises.</p> <p>(3) Consider in the contract process whether firms competing for larger contracts intend to subcontract with small businesses, minority-owned firms, and women's business enterprises.</p> <p>(4) Encourage contracting with consortiums of small businesses, minority-owned firms and women's business enterprises when a contract is too large for one of these firms to handle individually.</p> <p>(5) Use the services and assistance, as appropriate, of organizations such as the Small Business Administration and the Department of Commerce's Minority Business Development Agency in the solicitation and utilization of small businesses, minority-owned firms and women's business enterprises.</p> <p><b>[34 CFR 74.44(e)]</b></p> <p>(e) Recipients shall, on request, make available for the Secretary, pre-award review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, etc., when any of the following conditions apply:</p> <p>(1) A recipient's procurement procedures or operation fails to comply with the procurement standards in this part.</p> <p>(2) The procurement is expected to exceed</p> | <p><b>surplus area firms.</b></p> <p>(a) The non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.</p> <p>(b) Affirmative steps must include:</p> <p>(1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;</p> <p>(2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;</p> <p>(3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;</p> <p>(4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;</p> <p>(5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and</p> <p>(6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section.</p> <p><b>§200.324 Federal awarding agency or pass-through entity review.</b></p> <p>(a) The non-Federal entity must make available, upon request of the Federal awarding agency or pass-through entity, technical specifications on proposed procurements where the Federal awarding agency or pass-through entity believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if</p> |

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| <p>the small purchase threshold fixed at 41 U.S.C. 403 (11) (currently \$25,000) and is to be awarded without competition or only one bid or offer is received in response to a solicitation.</p> <p>(3) The procurement, which is expected to exceed the small purchase threshold, specifies a “brand name” product.</p> <p>(4) The proposed award over the small purchase threshold is to be awarded to other than the apparent low bidder under a sealed bid procurement.</p> <p>(5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the amount of the small purchase threshold.</p> | <p>the non-Federal entity desires to have the review accomplished after a solicitation has been developed, the Federal awarding agency or pass-through entity may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.</p> <p>(b) The non-Federal entity must make available upon request, for the Federal awarding agency or pass-through entity pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates, when:</p> <p>(1) The non-Federal entity's procurement procedures or operation fails to comply with the procurement standards in this part;</p> <p>(2) The procurement is expected to exceed the Simplified Acquisition Threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation;</p> <p>(3) The procurement, which is expected to exceed the Simplified Acquisition Threshold, specifies a “brand name” product;</p> <p>(4) The proposed contract is more than the Simplified Acquisition Threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or</p> <p>(5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold.</p> <p>(c) The non-Federal entity is exempt from the pre-procurement review in paragraph (b) of this section if the Federal awarding agency or pass-through entity determines that its procurement systems comply with the standards of this part.</p> <p>(1) The non-Federal entity may request that its procurement system be reviewed by the Federal awarding agency or pass-through entity to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews must occur where there is continuous high-dollar funding, and third party contracts are awarded on a regular basis;</p> <p>(2) The non-Federal entity may self-certify its procurement system. Such self-certification must not limit the Federal awarding agency's right to survey the system. Under a self-certification procedure, the Federal awarding agency may rely on written</p> |

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| <p>(f)(1)(i) A faith-based organization is eligible to contract with recipients on the same basis as any other private organization, with respect to contracts for which such other organizations are eligible.</p> <p>(ii) In the selection of goods and services providers, recipients shall not discriminate for or against a private organization on the basis of the organization's religious character or affiliation.</p> <p>(2) The provisions of §§75.532 and 76.532 applicable to grantees and subgrantees apply to a faith-based organization that contracts with a recipient, unless the faith-based organization is selected as a result of the genuine and independent private choices of individual beneficiaries of the program and provided the organization otherwise satisfies the requirements of the program.</p> <p>(3) A private organization that engages in inherently religious activities, such as religious worship, instruction, or proselytization, must offer those services separately in time or location from any programs or services supported by a contract with a recipient, and participation in any such inherently religious activities by beneficiaries of the programs supported by the contract must be voluntary, unless the organization is selected as a result of the genuine and independent private choices of individual beneficiaries of the program and provided the organization otherwise satisfies the requirements of the program.</p> <p>(4)(i) A faith-based organization that contracts with a recipient may retain its independence, autonomy, right of expression, religious character, and authority over its governance.</p> <p>(ii) A faith-based organization may, among</p> | <p>assurances from the non-Federal entity that it is complying with these standards. The non-Federal entity must cite specific policies, procedures, regulations, or standards as being in compliance with these requirements and have its system available for review</p> |



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| <p>other things—</p> <p>(A) Retain religious terms in its name;</p> <p>(B) Continue to carry out its mission, including the definition, development, practice, and expression of its religious beliefs;</p> <p>(C) Use its facilities to provide services without removing or altering religious art, icons, scriptures, or other symbols from these facilities;</p> <p>(D) Select its board members and otherwise govern itself on a religious basis; and</p> <p>(E) Include religious references in its mission statement and other chartering or governing documents.</p> <p>(5) A private organization that contracts with a recipient shall not discriminate against a beneficiary or prospective beneficiary in the provision of program services on the basis of religion or religious belief.</p> <p>(6) A religious organization's exemption from the Federal prohibition on employment discrimination on the basis of religion, in section 702(a) of the Civil Rights Act of 1964, 42 U.S.C. 2000e-1, is not forfeited when the organization contracts with a recipient.</p> |   |
| <p><b>§74.45 Cost and price analysis.</b></p> <p>Some form of cost or price analysis must 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. Cost analysis is the review and evaluation of each element of cost to determine reasonableness, allocability, and allowability.</p>   | <p><b>§200.323 Contract cost and price.</b></p> <p>(a) The non-Federal entity must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the non-Federal entity must make independent estimates before receiving bids or proposals.</p> <p>(b) The non-Federal entity must negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.</p> |

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|   | <p>(c) Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the non-Federal entity under Subpart E—Cost Principles of this part. The non-Federal entity may reference its own cost principles that comply with the Federal cost principles.</p> <p>(d) The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.</p> |
| <p><b>§74.46 Procurement records.</b><br/>Procurement records and files for purchases in excess of the small purchase threshold must include the following at a minimum—</p> <ul style="list-style-type: none"> <li>(a) Basis for contractor selection;</li> <li>(b) Justification for lack of competition when competitive bids or offers are not obtained;</li> <li>(c) Basis for award cost or price.</li> </ul>   | <p><b>§200.318 General procurement standards.[A portion of this section]</b></p> <p>(i) The non-Federal entity must maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.</p>  |
| <p><b>§74.47 Contract administration.</b><br/>A system for contract administration must be maintained to ensure contractor conformance with the terms, conditions and specifications of the contract, and to ensure adequate and timely follow up of all purchases. Recipients shall evaluate contractor performance and document, as appropriate, whether contractors have met the terms, conditions, and specifications of the contract.</p>  |  |
| <p><b>§74.48 Contract provisions.</b><br/>The recipient shall include, in addition to provisions to define a sound and complete agreement, the following provisions in all contracts. The following provisions must also be applied to subcontracts:</p> <ul style="list-style-type: none"> <li>(a) Contracts in excess of the small purchase threshold shall contain contractual provisions or conditions that allow for administrative, contractual, or legal remedies in instances in which a contractor violates or breaches the contract terms, and provide for remedial actions as may be appropriate.</li> </ul> | <p><b>§200.326 Contract provisions.</b><br/>The non-Federal entity's contracts must contain the applicable provisions described in Appendix II to Part 200—Contract Provisions for non-Federal Entity Contracts Under Federal Awards.</p>  |

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| <p>(b) All contracts in excess of the small purchase threshold shall contain suitable provisions for termination by the recipient, including the manner by which termination shall be effected and the basis for settlement. In addition, contracts must describe conditions under which the contract may be terminated for default, as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.</p> <p>(c) Except as otherwise required by statute, an award that requires the contracting (or subcontracting) for construction or facility improvements must provide for the recipient to follow its own requirements relating to bid guarantees, performance bonds, and payment bonds unless the construction contract or subcontract exceeds \$100,000. For those contracts or subcontracts exceeding \$100,000, the Secretary may accept the bonding policy and requirements of the recipient, provided the Secretary has made a determination that the Federal Government's interest is adequately protected. If a determination has not been made, the minimum requirements are as follows:</p> <p>(1) A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder shall, upon acceptance of his bid, execute contractual documents as may be required within the time specified.</p> <p>(2) A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under a contract.</p> <p>(3) A payment bond on the part of the contractor for 100 percent of the contract</p> | <p><b>§200.325 Bonding requirements.</b><br/>For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, the Federal awarding agency or pass-through entity may accept the bonding policy and requirements of the non-Federal entity provided that the Federal awarding agency or pass-through entity has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:</p> <p>(a) A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.</p> <p>(b) A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.</p> <p>(c) A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure</p> |

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| <p>price. A “payment bond” is one executed in connection with a contract to assure payment as required by statute of all persons supplying labor and material in the execution of the work provided for in the contract.</p> <p>(4) Where bonds are required, the bonds must be obtained from companies holding certificates of authority as acceptable sureties pursuant to 31 CFR Part 223—Surety Companies Doing Business with the United States.</p> <p>(d) All negotiated contracts (except those for less than the small purchase threshold) awarded by recipients must include a provision to the effect that the recipient, ED, the Comptroller General of the United States, or any of their duly authorized representatives, must have access to any books, documents, papers and records of the contractor which are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts and transcriptions.</p> <p>(e) All contracts, including small purchases, awarded by recipients and their contractors must contain the procurement provisions of appendix A to this part, as applicable.</p> | <p>payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.</p>  |
| <p><b>APPENDIX A TO PART 74</b></p> <p>All contracts, awarded by a recipient including small purchases, shall contain the following provisions as applicable:</p>   | <p><b>Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards.</b></p> <p>In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.</p> <p>(A) Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.</p> <p>(B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be</p> |

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| <p>1. <i>Equal Employment Opportunity</i>—All contracts must contain a provision requiring compliance with E.O. 11246—Equal Employment Opportunity, as amended by E.O. 11375—Amending Executive Order 11246 Relating to Equal Employment Opportunity, and as supplemented by regulations at 41 CFR Part 60—Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.</p> <p>2. <i>Copeland “Anti-Kickback” Act (18 U.S.C. 874 and 40 U.S.C. 276c)</i>—All contracts and subgrants in excess of \$2,000 for construction or repair awarded by recipients and subrecipients must include a provision for compliance with the Copeland “Anti-Kickback” Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR Part 3—Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States). The Act provides that each contractor or subrecipient shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The recipient shall report all</p> | <p>effected and the basis for settlement.</p> <p>(C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”</p> <p>(D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be</p> |

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| <p>suspected or reported violations to the Federal awarding agency.</p> <p>3. <i>Davis-Bacon Act, as amended (40 U.S.C. 276a to a-7)</i>—When required by Federal program legislation, all construction contracts awarded by the recipients and subrecipients of more than \$2,000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) and as supplemented by Department of Labor regulations (29 CFR Part 5—Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction). Under this Act, contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less than once a week. The recipient shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The recipient shall report all suspected or reported violations to the Federal awarding agency.</p> | <p>required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.</p> |
| <p>4. <i>Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333)</i>—Where applicable, all contracts awarded by recipients in excess of \$2,000 for construction contracts and in excess of \$2500 for other contracts that involve the employment of mechanics or laborers must include a provision for compliance with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), as supplemented by Department of Labor regulations (29 CFR Part 5). Under Section 102 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1½</p>  | <p>(E) <i>Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708)</i>. Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are</p>   |

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| <p>times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.</p> <p>5. <i>Rights to Inventions Made Under a Contract or Agreement</i>—Contracts or agreements for the performance of experimental, developmental, or research work must provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR Part 401—Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements, and any implementing regulations issued by the awarding agency.</p> <p>6. <i>Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.)</i>, as amended—Contracts and subgrants of amounts in excess of \$100,000 shall contain a provision that requires the recipient to agree to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.). Violations shall be reported to ED and the Regional Office of the Environmental Protection Agency (EPA).</p> <p><b>[C. Ref. See paragraph 8 of this Appendix and 2 CFR parts 180 and 3485 Re: Debarment and Suspension]</b></p> | <p>unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.</p> <p>(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.</p> <p>(G) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).</p> <p>(H) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201).</p> <p>(I) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide Excluded Parties List System in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement</p> |



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| <p>7. <i>Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)</i>—Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. The disclosures are forwarded from tier to tier up to the recipient.</p> <p>8. <i>Debarment and Suspension (E.O. 12549 and E.O. 12689)</i>—No contract may be made to parties listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Nonprocurement Programs in accordance with E.O 12549 and E.O. 12689—Debarment and Suspension. This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than E.O. 12549.</p> <p>Contractors with awards that exceed the small purchase threshold must provide the required certification regarding its exclusion status and that of its principal employees.</p> | <p>Executive Orders 12549 (3 CFR Part 1986 Comp., p. 189) and 12689 (3 CFR Part 1989 Comp., p. 235), “Debarment and Suspension.” The Excluded Parties List System in SAM contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.</p> <p>(J) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award of \$100,000 or more must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.</p> <p><b>[See paragraph (I) of this Appendix]</b></p> |
|   | <p><b>§200.317 Procurements by states.</b></p> <p>When procuring property and services under a Federal award, a state must follow the same policies and procedures it uses for procurements from its non-</p>  |

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|   | Federal funds. The state will comply with §200.322 Procurement of recovered <i>materials</i> and ensure that every purchase order or other contract includes any clauses required by section §200.326 Contract provisions. All other non-Federal entities, including subrecipients of a state, will follow §§200.318 General procurement standards through 200.326 Contract provisions.  |
|   | <p><b>§200.322 Procurement of recovered materials.</b><br/> A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.</p> |
| <p><b>§74.50 Purpose of reports and records.</b><br/> Sections 74.51 through 74.53 establish the procedures for monitoring and reporting on the recipient's financial and program performance and the necessary standard reporting forms. They also establish record retention requirements.</p>                        |  |
| <p><b>§74.51 Monitoring and reporting program performance.</b><br/> (a) Recipients are responsible for managing and monitoring each project, program, subaward, function, or activity supported by the award. Recipients shall monitor subawards to ensure subrecipients have met the audit requirements in §74.26.</p> | <p><b>200.328 Monitoring and reporting program performance.</b><br/> (a) <i>Monitoring by the non-Federal entity.</i> The non-Federal entity is responsible for oversight of the operations of the Federal award supported activities. The non-Federal entity must monitor its activities under Federal awards to assure compliance with applicable Federal requirements and performance expectations are being achieved. Monitoring by the non-Federal entity must cover each program, function or activity. See also §200.331 Requirements for pass-through</p>  |

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|   | <p><i>entities.</i></p> <p>(b) <i>Non-construction performance reports.</i> The Federal awarding agency must use standard, OMB-approved data elements for collection of performance information (including performance progress reports, Research Performance Progress Report, or such future collections as may be approved by OMB and listed on the OMB Web site).</p>  |
| <p>(b) The Secretary prescribes the frequency with which the performance reports shall be submitted. Except as provided in §74.51(f), performance reports are not required more frequently than quarterly or, less frequently than annually. Annual reports are due 90 calendar days after the grant year; quarterly or semi-annual reports are due 30 days after the reporting period. The Secretary may require annual reports before the anniversary dates of multiple year awards in lieu of these requirements. The final performance reports are due 90 calendar days after the expiration or termination of the award.</p> <p>(c) If inappropriate, a final technical or performance report is not required after completion of the project.</p> <p>(d) When required, performance reports must generally contain, for each award, brief information on each of the following:</p> | <p>(1) The non-Federal entity must submit performance reports at the interval required by the Federal awarding agency or pass-through entity to best inform improvements in program outcomes and productivity. Intervals must be no less frequent than annually nor more frequent than quarterly except in unusual circumstances, for example where more frequent reporting is necessary for the effective monitoring of the Federal award or could significantly affect program outcomes. Annual reports must be due 90 calendar days after the reporting period; quarterly or semiannual reports must be due 30 calendar days after the reporting period. Alternatively, the Federal awarding agency or pass-through entity may require annual reports before the anniversary dates of multiple year Federal awards. The final performance report will be due 90 calendar days after the period of performance end date. If a justified request is submitted by a non-Federal entity, the Federal agency may extend the due date for any performance report.</p> <p>(2) The non-Federal entity must submit performance reports using OMB-approved governmentwide standard information collections when providing performance information. As appropriate in accordance with above mentioned information collections, these reports will contain, for each Federal award, brief information on the following unless other collections are approved by OMB:</p> |
| <p>(1) A comparison of actual accomplishments with the goals and objectives established for</p>   | <p>(i) A comparison of actual accomplishments to the objectives of the Federal award established for the</p>  |

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| <p>the period, the findings of the investigator, or both. Whenever appropriate and the output of programs or projects can be readily quantified, this quantitative data should be related to cost data for computation of unit costs.</p> <p>(2) Reasons why established goals were not met, if appropriate.</p> <p>(3) Other pertinent information including, when appropriate, analysis, and explanation of cost overruns or high unit costs.</p> <p>(e) Recipients are not required to submit more than the original and two copies of performance reports.</p> <p>(f) Recipients shall immediately notify the Secretary of developments that have a significant impact on the award-supported activities. Also, notification must be given in the case of problems, delays, or adverse conditions which materially impair the ability to meet the objectives of the award. This notification must include a statement of the action taken or contemplated, and any assistance needed to resolve the situation.</p> <p>(g) The Secretary may make site visits, as needed.</p> <p>(h) The Secretary complies with the clearance requirements of 5 CFR part 1320 when requesting performance data from recipients.</p> | <p>period. Where the accomplishments of the Federal award can be quantified, a computation of the cost (for example, related to units of accomplishment) may be required if that information will be useful. Where performance trend data and analysis would be informative to the Federal awarding agency program, the Federal awarding agency should include this as a performance reporting requirement.</p> <p>(ii) The reasons why established goals were not met, if appropriate.</p> <p>(iii) Additional pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.</p> <p>(c) <i>Construction performance reports.</i> For the most part, onsite technical inspections and certified percentage of completion data are relied on heavily by Federal awarding agencies and pass-through entities to monitor progress under Federal awards and subawards for construction. The Federal awarding agency may require additional performance reports only when considered necessary.</p> <p>(d) <i>Significant developments.</i> Events may occur between the scheduled performance reporting dates that have significant impact upon the supported activity. In such cases, the non-Federal entity must inform the Federal awarding agency or pass-through entity as soon as the following types of conditions become known:</p> <p>(1) Problems, delays, or adverse conditions which will materially impair the ability to meet the objective of the Federal award. This disclosure must include a statement of the action taken, or contemplated, and any assistance needed to resolve the situation.</p> <p>(2) Favorable developments which enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more or different beneficial results than originally planned.</p> <p>(e) The Federal awarding agency may make site visits as warranted by program needs.</p> <p>(f) The Federal awarding agency may waive any performance report required by this part if not needed.</p> |

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| <p><b>§74.52 Financial reporting.</b><br/> (a) The following forms or other forms as may be approved by OMB are authorized for obtaining financial information from recipients.</p> <p>(1) <i>SF-269 or SF-269A—Financial Status Report.</i> (i) Recipients are required to use the SF-269 or SF-269A to report the status of funds for all nonconstruction projects or programs. The Secretary may not require the SF-269 or SF-269A when, the Secretary determines that SF-270—Request for Advance or Reimbursement, or SF-272—Report of Federal Cash Transactions—provides adequate information to meet the Department's needs, except that a final SF-269 or SF-269A is required at the completion of the project when the SF-270 is used only</p> | <p><b>§200.327 Financial reporting.</b><br/> Unless otherwise approved by OMB, the Federal awarding agency may solicit only the standard, OMB-approved governmentwide data elements for collection of financial information (at time of publication the Federal Financial Report or such future collections as may be approved by OMB and listed on the OMB Web site). This information must be collected with the frequency required by the terms and conditions of the Federal award, but no less frequently than annually nor more frequently than quarterly except in unusual circumstances, for example where more frequent reporting is necessary for the effective monitoring of the Federal award or could significantly affect program outcomes, and preferably in coordination with performance reporting.</p> <p><b>§200.329 Reporting on real property.</b><br/> The Federal awarding agency or pass-through entity must require a non-Federal entity to submit reports at least annually on the status of real property in which the Federal government retains an interest, unless the Federal interest in the real property extends 15 years or longer. In those instances where the Federal interest attached is for a period of 15 years or more, the Federal awarding agency or pass-through entity, at its option, may require the non-Federal entity to report at various multi-year frequencies (e.g., every two years or every three years, not to exceed a five-year reporting period; or a Federal awarding agency or pass-through entity may require annual reporting for the first three years of a Federal award and thereafter require reporting every five years).</p> |

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| <p>for advances.</p> <p>(ii) The Secretary prescribes whether the report is on a cash or accrual basis. If the Secretary requires accrual information and the recipient's accounting records are not normally kept on the accrual basis, the recipient is not required to convert its accounting system, but shall develop accrual information through best estimates based on an analysis of the documentation on hand.</p> <p>(iii) The Secretary determines the frequency of the Financial Status Report for each project or program, considering the size and complexity of the particular project or program. However, the report is not required more frequently than quarterly or less frequently than annually. A final report is required at the completion of the agreement.</p> <p>(iv) The Secretary requires recipients to submit the SF-269 or SF-269A (an original and no more than two copies) no later than 30 days after the end of each specified reporting period for quarterly and semi-annual reports, and 90 calendar days for annual and final reports. Extensions of reporting due dates may be approved by the Secretary upon request of the recipient.</p> <p><i>(2) SF-272—Report of Federal Cash Transactions.</i> (i) When funds are advanced to recipients the Secretary requires each recipient to submit the SF-272 and, when necessary, its continuation sheet, SF-272a. The Secretary uses this report to monitor cash advanced to recipients and to obtain disbursement information for each agreement with the recipients.</p> <p>(ii) The Secretary may require forecasts of Federal cash requirements in the “Remarks” section of the report.</p> <p>(iii) When practical and deemed necessary, the Secretary may require recipients to report in the “Remarks” section the amount of cash advances received in excess of three days. Recipients shall provide short narrative explanations of actions taken to reduce the excess balances.</p> |                |

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| <p>(iv) Recipients shall be required to submit not more than the original and two copies of the SF-272 15 calendar days following the end of each quarter. The Secretary may require a monthly report from those recipients receiving advances totaling \$1 million or more per year.</p> <p>(v) The Secretary may waive the requirement for submission of the SF-272 for any one of the following reasons:</p> <p>(A) When monthly advances do not exceed \$25,000 per recipient, provided that advances are monitored through other forms contained in this section;</p> <p>(B) If, in the Secretary's opinion, the recipient's accounting controls are adequate to minimize excessive Federal advances; or</p> <p>(C) When the electronic payment mechanisms provide adequate data.</p> <p>(b) When the Secretary needs additional information or more frequent reports, the following shall be observed:</p> <p>(1) When additional information is needed to comply with legislative requirements, the Secretary shall issue instructions to require recipients to submit information under the "Remarks" section of the reports.</p> <p>(2) When the Secretary determines that a recipient's accounting system does not meet the standards in §74.21, additional pertinent information to further monitor awards may be obtained upon written notice to the recipient until the system is brought up to standard. The Secretary, in obtaining this information, complies with the report clearance requirements of 5 CFR part 1320.</p> <p>(3) The Secretary may shade out any line item on any report if not necessary.</p> <p>(4) The Secretary may accept the identical information from the recipients in machine readable format or computer printouts or electronic outputs in lieu of prescribed formats.</p> <p>(5) The Secretary may provide computer or electronic outputs to recipients when these outputs expedite or contribute to the</p> |                |



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| accuracy of reporting.  |  |
| <p><b>§74.53 Retention and access requirements for records.</b></p> <p>(a) This section establishes requirements for record retention and access to records for awards to recipients. The Secretary does not impose any other record retention or access requirements upon recipients.</p>  | <p><b>§200.333 Retention requirements for records.</b></p>   |
| <p>(b) Financial records, supporting documents, statistical records, and all other records pertinent to an award shall be retained for a period of three years from the date of submission of the final expenditure report or, for awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, as authorized by the Secretary. The only exceptions are the following:</p> <p>(1) If any litigation, claim, or audit is started before the expiration of the 3-year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken.</p> <p>(2) Records for real property and equipment acquired with Federal funds shall be retained for 3 years after final disposition.</p> <p>(3) When records are transferred to or maintained by the Secretary, the 3-year retention requirement is not applicable to the recipient.</p> | <p>Financial records, supporting documents, statistical records, and all other non-Federal entity records pertinent to a Federal award must be retained for a period of three years from the date of submission of the final expenditure report or, for Federal awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, respectively, as reported to the Federal awarding agency or pass-through entity in the case of a subrecipient. Federal awarding agencies and pass-through entities must not impose any other record retention requirements upon non-Federal entities. The only exceptions are the following:</p> <p>(a) If any litigation, claim, or audit is started before the expiration of the 3-year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken.</p> <p>(b) When the non-Federal entity is notified in writing by the Federal awarding agency, cognizant agency for audit, oversight agency for audit, cognizant agency for indirect costs, or pass-through entity to extend the retention period.</p> <p>(c) Records for real property and equipment acquired with Federal funds must be retained for 3 years after final disposition.</p> <p>(d) When records are transferred to or maintained by the Federal awarding agency or pass-through entity, the 3-year retention requirement is not applicable to the non-Federal entity.</p> <p>(e) Records for program income transactions after the period of performance. In some cases recipients must report program income after the period of performance. Where there is such a requirement, the retention period for the records pertaining to the earning of the program income starts from the end of the non-Federal entity's fiscal year in which the</p> |

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| <p>(4) Indirect cost rate proposals, cost allocations plans, etc. as specified in §74.53(g).</p> <p>(c) Copies of original records may be substituted for the original records if authorized by the Secretary.</p> <p>(d) The Secretary requests transfer of certain records to its custody from recipients when it determines that the records possess long term retention value. However, in order to avoid duplicate recordkeeping, the Secretary may make arrangements for recipients to retain any records that are continuously needed for joint use.</p> | <p>program income is earned.</p> <p>(f) Indirect cost rate proposals and cost allocations plans. This paragraph applies to the following types of documents and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).</p> <p>(1) <i>If submitted for negotiation.</i> If the proposal, plan, or other computation is required to be submitted to the Federal government (or to the pass-through entity) to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts from the date of such submission.</p> <p>(2) <i>If not submitted for negotiation.</i> If the proposal, plan, or other computation is not required to be submitted to the Federal government (or to the pass-through entity) for negotiation purposes, then the 3-year retention period for the proposal, plan, or computation and its supporting records starts from the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.</p> <p><b>§200.334 Requests for transfer of records.</b><br/>The Federal awarding agency must request transfer of certain records to its custody from the non-Federal entity when it determines that the records possess long-term retention value. However, in order to avoid duplicate recordkeeping, the Federal awarding agency may make arrangements for the non-Federal entity to retain any records that are continuously needed for joint use.</p> <p><b>§200.335 Methods for collection, transmission and storage of information.</b><br/>In accordance with the May 2013 Executive Order on Making Open and Machine Readable the New Default for Government Information, the Federal awarding agency and the non-Federal entity should, whenever practicable, collect, transmit, and store Federal award-related information in open and machine readable formats rather than in closed formats or on paper. The</p> |

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| <p>(e) The Secretary, the Inspector General, Comptroller General of the United States, or any of their duly authorized representatives, have the right of timely and unrestricted access to any books, documents, papers, or other records of recipients that are pertinent to the awards, in order to make audits, examinations, excerpts, transcripts, and copies of documents. This right also includes timely and reasonable access to a recipient's personnel for the purpose of interview and discussion related to these documents. The rights of access in this paragraph are not limited to the required retention period, but shall last as long as records are retained.</p> | <p>Federal awarding agency or pass-through entity must always provide or accept paper versions of Federal award-related information to and from the non-Federal entity upon request. If paper copies are submitted, the Federal awarding agency or pass-through entity must not require more than an original and two copies. When original records are electronic and cannot be altered, there is no need to create and retain paper copies. When original records are paper, electronic versions may be substituted through the use of duplication or other forms of electronic media provided that they are subject to periodic quality control reviews, provide reasonable safeguards against alteration, and remain readable.</p> <p><b>§200.336 Access to records.</b></p> <p>(a) Records of non-Federal entities. The Federal awarding agency, Inspectors General, the Comptroller General of the United States, and the pass-through entity, or any of their authorized representatives, must have the right of access to any documents, papers, or other records of the non-Federal entity which are pertinent to the Federal award, in order to make audits, examinations, excerpts, and transcripts. The right also includes timely and reasonable access to the non-Federal entity's personnel for the purpose of interview and discussion related to such documents.</p> <p>(b) Only under extraordinary and rare circumstances would such access include review of the true name of victims of a crime. Routine monitoring cannot be considered extraordinary and rare circumstances that would necessitate access to this information. When access to the true name of victims of a crime is necessary, appropriate steps to protect this sensitive information must be taken by both the non-Federal entity and the Federal awarding agency. Any such access, other than under a court order or subpoena pursuant to a bona fide confidential investigation, must be approved by the head of the Federal awarding agency or delegate.</p> <p>(c) Expiration of right of access. The rights of access in this section are not limited to the required retention period but last as long as the records are retained. Federal awarding agencies and pass-through entities must not impose any other access requirements upon non-Federal entities.</p> |

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| <p>(f) Unless required by statute, the Secretary does not place restrictions on recipients that limit public access to the records of recipients that are pertinent to an award, except when the Secretary can demonstrate that the records must be kept confidential and would have been exempted from disclosure pursuant to the Freedom of Information Act (5 U.S.C. 552) if the records had belonged to ED.</p> <p>(g) The starting date for retention of the following types of documents (including supporting records) is specified in paragraphs (g)(1) and (2) of this section: indirect cost rate computations or proposals; cost allocation plans; and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).</p> <p>(1) <i>If submitted for negotiation.</i> If the recipient submits to the Secretary or the subrecipient submits to the recipient the proposal, plan, or other computation to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts on the date of submission.</p> <p>(2) <i>If not submitted for negotiation.</i> If the recipient is not required to submit to the Secretary or the subrecipient is not required to submit to the recipient the proposal, plan, or other computation for negotiation purposes, then the 3-year retention period for the proposal, plan, or other computation and its supporting records starts at the end of</p> | <p><b>§200.337 Restrictions on public access to records.</b><br/>No Federal awarding agency may place restrictions on the non-Federal entity that limit public access to the records of the non-Federal entity pertinent to a Federal award, except for protected personally identifiable information (PII) or when the Federal awarding agency can demonstrate that such records will be kept confidential and would have been exempted from disclosure pursuant to the Freedom of Information Act (5 U.S.C. 552) or controlled unclassified information pursuant to Executive Order 13556 if the records had belonged to the Federal awarding agency. The Freedom of Information Act (5 U.S.C. 552) (FOIA) does not apply to those records that remain under a non-Federal entity's control except as required under §200.315 Intangible property. Unless required by Federal, state, local, and tribal statute, non-Federal entities are not required to permit public access to their records. The non-Federal entity's records provided to a Federal agency generally will be subject to FOIA and applicable exemptions.</p> |

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| the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.  |   |
| <p><b>§74.60 Purpose of termination and enforcement.</b></p> <p>Sections 74.61 and 74.62 establish uniform suspension, termination, and enforcement procedures.</p>  |   |
| <p><b>§74.61 Termination.</b></p> <p>(a) Awards may be terminated in whole or in part only—</p> <p>(1) By the Secretary, if a recipient materially fails to comply with the terms and conditions of an award;</p> <p>(2) By the Secretary with the consent of the recipient, in which case the two parties shall agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated.</p> <p>(3) By the recipient, upon sending to the Secretary written notification containing the reasons for the termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the Secretary determines in the case of partial termination that the reduced or modified portion of the grant will not accomplish the purposes for which the grant was made, it</p> | <p><b>§200.338 Remedies for noncompliance.</b></p> <p>If a non-Federal entity fails to comply with Federal statutes, regulations or the terms and conditions of a Federal award, the Federal awarding agency or pass-through entity may impose additional conditions, as described in §200.207 Specific conditions. If the Federal awarding agency or pass-through entity determines that noncompliance cannot be remedied by imposing additional conditions, the Federal awarding agency or pass-through entity may take one or more of the following actions, as appropriate in the circumstances:</p> <p><b>[C. Ref. 74.62 for similar remedies]</b></p> <p>(a) Temporarily withhold cash payments pending correction of the deficiency by the non-Federal entity or more severe enforcement action by the Federal awarding agency or pass-through entity.</p> <p>(b) Disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance.</p> <p>(c) Wholly or partly suspend or terminate the Federal award.</p> <p>(d) Initiate suspension or debarment proceedings as authorized under 2 CFR part 180 and Federal awarding agency regulations (or in the case of a pass-through entity, recommend such a proceeding be initiated by a Federal awarding agency).</p> <p>(e) Withhold further Federal awards for the project or program.</p> <p>(f) Take other remedies that may be legally available.</p> |

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| <p>may terminate the grant in its entirety under either paragraph (a)(1) or (2) of this section. (b) If costs are allowed under an award, the responsibilities of the recipient referred to in §74.71(a), including those for property management as applicable, shall be considered in the termination of the award, and provision shall be made for continuing responsibilities of the recipient after termination, as appropriate.</p>   |   |
| <p><b>§74.62 Enforcement.</b><br/> (a) <i>Remedies for noncompliance.</i> If a recipient materially fails to comply with the terms and conditions of an award, whether stated in a Federal statute, regulation, assurance, application, or notice of award, the Secretary may, in addition to imposing any of the special conditions outlined in §74.14, take one or more of the following actions, as appropriate in the circumstances:<br/> (1) Temporarily withhold cash payments pending correction of the deficiency by the recipient or more severe enforcement action by the Secretary.<br/> (2) Disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance.<br/> (3) Wholly or partly suspend or terminate the current award.<br/> (4) Withhold further awards for the project or program.<br/> (5) Take other remedies that may be legally available.</p> | <p><b>§200.340 Notification of termination requirement.</b><br/> (a) The Federal agency or pass-through entity must provide to the non-Federal entity a notice of termination.<br/> (b) If the Federal award is terminated for the non-Federal entity's failure to comply with the Federal statutes, regulations, or terms and conditions of the Federal award, the notification must state that the termination decision may be considered in evaluating future applications received from the non-Federal entity.</p> <p>(c) Upon termination of a Federal award, the Federal awarding agency must provide the information required under FFATA to the Federal Web site established to fulfill the requirements of FFATA, and update or notify any other relevant governmentwide systems or entities of any indications of poor performance as required by 41 U.S.C. 417b and 31 U.S.C. 3321 and implementing guidance at 2 CFR part 77 (forthcoming at time of publication). See also the requirements for Suspension and Debarment at 2 CFR part 180.</p> <p><b>§200.341 Opportunities to object, hearings and appeals.</b></p> |

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| <p>(b) <i>Hearings and appeals.</i> In taking an enforcement action, the Secretary provides the recipient an opportunity for hearing, appeal, or other administrative proceeding to which the recipient is entitled under any statute or regulation applicable to the action involved.</p>  | <p>Upon taking any remedy for non-compliance, the Federal awarding agency must provide the non-Federal entity an opportunity to object and provide information and documentation challenging the suspension or termination action, in accordance with written processes and procedures published by the Federal awarding agency. The Federal awarding agency or pass-through entity must comply with any requirements for hearings, appeals or other administrative proceedings to which the non-Federal entity is entitled under any statute or regulation applicable to the action involved.</p>   |
| <p>(c) <i>Effects of suspension and termination.</i> Costs of a recipient resulting from obligations incurred by the recipient during a suspension or after termination of an award are not allowable unless the Secretary expressly authorizes them in the notice of suspension or termination or subsequently. Other recipient costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if—</p> <p>(1) The costs result from obligations which were properly incurred by the recipient before the effective date of suspension or termination, are not in anticipation of it, and in the case of a termination, are noncancellable; and</p> <p>(2) The costs would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.</p> <p>(d) <i>Relationship to debarment and suspension.</i> The enforcement remedies identified in this section, including suspension and termination, do not preclude ED from initiating a debarment or suspension action against a recipient under 34 CFR part</p> | <p><b>§200.342 Effects of suspension and termination.</b> Costs to the non-Federal entity resulting from obligations incurred by the non-Federal entity during a suspension or after termination of a Federal award or subaward are not allowable unless the Federal awarding agency or pass-through entity expressly authorizes them in the notice of suspension or termination or subsequently. However, costs during suspension or after termination are allowable if:</p> <p>(a) The costs result from obligations which were properly incurred by the non-Federal entity before the effective date of suspension or termination, are not in anticipation of it; and</p> <p>(b) The costs would be allowable if the Federal award was not suspended or expired normally at the end of the period of performance in which the termination takes effect.</p> |



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| 85 (see §74.13).  |   |
| <p><b>§74.70 Purpose.</b><br/>Sections 74.71 through 74.73 contain closeout procedures and other procedures for subsequent disallowances and adjustments.</p>   |   |
| <p><b>§74.71 Closeout procedures.</b></p>   | <p><b>§200.343 Closeout.</b><br/>The Federal awarding agency or pass-through entity will close-out the Federal award when it determines that all applicable administrative actions and all required work of the Federal award have been completed by the non-Federal entity. This section specifies the actions the non-Federal entity and Federal awarding agency or pass-through entity must take to complete this process at the end of the period of performance.</p>   |
| <p>(a) Recipients shall submit, within 90 calendar days after the date of completion of the award, all financial, performance, and other reports as required by the terms and conditions of the award. The Secretary may approve extensions when requested by the recipient.</p> <p>(b) Unless the Secretary authorizes an extension, a recipient shall liquidate all obligations incurred under the award not later than 90 calendar days after the funding period or the date of completion as specified in the terms and conditions of the award or in ED implementing instructions.</p> <p>(c) The Secretary makes prompt payments to a recipient for allowable reimbursable costs under the award being closed out.</p> <p>(d) The recipient shall promptly refund any balances of unobligated cash that the Secretary has advanced or paid and that is not authorized to be retained by the recipient for use in other projects. OMB Circular A-129 governs unreturned amounts that become delinquent debts.</p> <p>(e) When authorized by the terms and conditions of the award, the Secretary makes a settlement for any upward or downward adjustments to the Federal share of costs</p> | <p>(a) The non-Federal entity must submit, no later than 90 calendar days after the end date of the period of performance, all financial, performance, and other reports as required by the terms and conditions of the Federal award. The Federal awarding agency or pass-through entity may approve extensions when requested by the non-Federal entity.</p> <p>(b) Unless the Federal awarding agency or pass-through entity authorizes an extension, a non-Federal entity must liquidate all obligations incurred under the Federal award not later than 90 calendar days after the end date of the period of performance as specified in the terms and conditions of the Federal award.</p> <p>(c) The Federal awarding agency or pass-through entity must make prompt payments to the non-Federal entity for allowable reimbursable costs under the Federal award being closed out.</p> <p>(d) The non-Federal entity must promptly refund any balances of unobligated cash that the Federal awarding agency or pass-through entity paid in advance or paid and that are not authorized to be retained by the non-Federal entity for use in other projects. See OMB Circular A-129 and see §200.345 Collection of amounts due, for requirements regarding unreturned amounts that become delinquent debts.</p> <p>(e) Consistent with the terms and conditions of the Federal award, the Federal awarding agency or pass-through entity must make a settlement for any upward or downward adjustments to the Federal share of costs</p> |

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| <p>after closeout reports are received.</p> <p>(f) The recipient shall account for any real and personal property acquired with Federal funds or received from the Federal Government in accordance with §§74.31 through 74.37.</p> <p>(g) In the event a final audit has not been performed prior to the closeout of an award, the Secretary shall retain the right to recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from the final audit.</p>   | <p>after closeout reports are received.</p> <p>(f) The non-Federal entity must account for any real and personal property acquired with Federal funds or received from the Federal Government in accordance with §§200.310 Insurance coverage through 200.316 Property trust relationship and 200.329 Reporting on real property.</p> <p>(g) The Federal awarding agency or pass-through entity should complete all closeout actions for Federal awards no later than one year after receipt and acceptance of all required final reports.</p>  |
| <p><b>§74.72 Subsequent adjustments and continuing responsibilities.</b></p> <p>(a) The closeout of an award does not affect any of the following:</p> <p>(1) The right of the Secretary to disallow costs and recover funds on the basis of a later audit or other review.</p> <p>(2) The obligation of the recipient to return any funds due as a result of later refunds, corrections, or other transactions.</p> <p>(3) Audit requirements in §74.26.</p> <p>(4) Property management requirements in §§74.31 through 74.37.</p> <p>(5) Records retention as required in §74.53.</p> <p>(b) After closeout of an award, a relationship created under an award may be modified or ended in whole or in part with the consent of the Secretary and the recipient, provided the</p> | <p><b>§200.344 Post-closeout adjustments and continuing responsibilities.</b></p> <p>(a) The closeout of a Federal award does not affect any of the following:</p> <p>(1) The right of the Federal awarding agency or pass-through entity to disallow costs and recover funds on the basis of a later audit or other review. The Federal awarding agency or pass-through entity must make any cost disallowance determination and notify the non-Federal entity within the record retention period.</p> <p>(2) The obligation of the non-Federal entity to return any funds due as a result of later refunds, corrections, or other transactions including final indirect cost rate adjustments.</p> <p>(3) Audit requirements in Subpart F—Audit Requirements of this part.</p> <p>(4) Property management and disposition requirements in Subpart D—Post Federal Award Requirements of this part, §§200.310 Insurance Coverage through 200.316 Property trust relationship.</p> <p>(5) Records retention as required in Subpart D—Post Federal Award Requirements of this part, §§200.333 Retention requirements for records through 200.337 Restrictions on public access to records.</p> <p>(b) After closeout of the Federal award, a relationship created under the Federal award may be modified or ended in whole or in part with the consent of the Federal awarding agency or pass-through entity and the</p> |

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| responsibilities of the recipient referred to in §74.73(a), including those for property management as applicable, are considered and provisions made for continuing responsibilities of the recipient, as appropriate.   | non-Federal entity, provided the responsibilities of the non-Federal entity referred to in paragraph (a) of this section, including those for property management as applicable, are considered and provisions made for continuing responsibilities of the non-Federal entity, as appropriate.   |
| <p><b>§74.73 Collection of amounts due.</b></p> <p>(a) Any funds paid to a recipient in excess of the amount to which the recipient is finally determined to be entitled under the terms and conditions of the award constitute a debt to the Federal Government. If not paid within a reasonable period after the demand for payment, the Secretary may reduce the debt by—</p> <p>(1) Making an administrative offset against other requests for reimbursements;</p> <p>(2) Withholding advance payments otherwise due to the recipient; or</p> <p>(3) Taking other action permitted by statute.</p> <p>(b) Except as otherwise provided by law, the Secretary charges interest on an overdue debt in accordance with 4 CFR Chapter II—Federal Claims Collection Standards.</p> | <p><b>§200.345 Collection of amounts due.</b></p> <p>(a) Any funds paid to the non-Federal entity in excess of the amount to which the non-Federal entity is finally determined to be entitled under the terms of the Federal award constitute a debt to the Federal government. If not paid within 90 calendar days after demand, the Federal awarding agency may reduce the debt by:</p> <p>(1) Making an administrative offset against other requests for reimbursements;</p> <p>(2) Withholding advance payments otherwise due to the non-Federal entity; or</p> <p>(3) Other action permitted by Federal statute.</p> <p>(b) Except where otherwise provided by statutes or regulations, the Federal awarding agency will charge interest on an overdue debt in accordance with the Federal Claims Collection Standards (31 CFR parts 900 through 999). The date from which interest is computed is not extended by litigation or the filing of any form of appeal.</p> |