

Table of Contents

PART 1. INTRODUCTORY TOPICS

CHAPTER 1. AN INTRODUCTION TO FEDERAL ASSISTANCE AND GRANTS

I. INTRODUCTION

- § 1:1 Welcome to a Broad Topic
- § 1:2 The Vast Realm of “Federal Assistance”
- § 1:3 Grants and Cooperative Agreements
- § 1:4 Types of Federal Assistance Other Than Grants and
Cooperative Agreements

II. KEY TERMINOLOGY IN FEDERAL GRANT PRACTICE

- § 1:5 Grant Vernacular
- § 1:6 Terminology for the Key Relationships and Documents
in Federal Grant Practice
- § 1:7 Terminology for the Key Parties in Federal Grant
Practice

III. FEDERAL GRANTS AND FEDERAL CONTRACTS

- § 1:8 The Relationship Between Federal Grants and
Procurement Contracts
- § 1:9 The Basic Purposes and Relationships of Grants and
Procurement Contracts
- § 1:10 The Procurement and Grant Federal Workforces
- § 1:11 Federal Spending on Contracts and Grants
- § 1:12 Two Contracting Processes
- § 1:13 Federal Oversight of Procurement and Assistance
- § 1:14 The Dispute Processes of Contracts and Grants

IV. THE “VERYS” OF FEDERAL GRANT PRACTICE

- § 1:15 Federal Grants are Very Many Things
- § 1:16 The “Verys” of Federal Grants
- § 1:17 Can We Afford This?

§ 1:18 Get Ready

CHAPTER 2. THE BACKGROUND OF FEDERAL ASSISTANCE

I. INTRODUCTION

§ 2:1 From the Beginning to Today

II. THE BACKGROUND OF FEDERAL ASSISTANCE

- § 2:2 A Long Tradition of Assistance
- § 2:3 The Roots and Roles of Assistance
- § 2:4 Assistance at the Birth of the Nation
- § 2:5 Early Assistance: Focus on Transportation and
Infrastructure
- § 2:6 Early Assistance for Social Needs: A Mixed Response
- § 2:7 “Federalism” and Federal Assistance
- § 2:8 Land Grants to Farmers
- § 2:9 Land Grants for Educational Institutions
- § 2:10 Evolution of the Form and National Strategy of
Assistance
- § 2:11 The Early 20th Century
- § 2:12 An Expansive Approach to Federal Assistance
- § 2:13 The New Deal
- § 2:14 Constitutional Challenges to Assistance “Compliance”
Conditions
- § 2:15 The Era of Research Assistance
- § 2:16 Post-World War II Assistance
- § 2:17 Federal Assistance and the Great Society
- § 2:18 The Paradigm Shifts: President Nixon
- § 2:19 The Carter Administration: The Department of
Education, and the Federal Grant and Cooperative
Agreement Act
- § 2:20 President Reagan
- § 2:21 Presidents G.H.W. Bush and Clinton
- § 2:22 President G.W. Bush
- § 2:23 President Obama
- § 2:24 President Trump (2017–2021)
- § 2:25 President Biden (2021–2025)
- § 2:26 President Trump (2025–Present)

TABLE OF CONTENTS

**CHAPTER 3. THE CURRENT
ENVIRONMENT OF FEDERAL GRANT
PRACTICE**

I. INTRODUCTION

§ 3:1 Present-Day Federal Assistance

**II. EVENTS AFFECTING FEDERAL ASSISTANCE
TODAY**

§ 3:2 OMB Emerges as the Lead Staff for Assistance
§ 3:3 The Federal Grant and Cooperative Agreement Act
§ 3:4 The 1980s
§ 3:5 The 1990s
§ 3:6 The 2000s
§ 3:7 2011 to the Present
§ 3:8 GAO Recommendations on Federal Grant Practice
§ 3:9 The Goals of the Council of Financial Assistance
Reform
§ 3:10 The Uniform Guidance

**III. CURRENT EVENTS IN FEDERAL GRANT
PRACTICE**

§ 3:11 Constant Change
§ 3:12 OMB April 2024 Revisions to the Uniform Guidance
§ 3:13 OMB May 2026 Proposed Rule: Regulation for Federal
Financial Assistance
§ 3:14 The Federal Grant Workforce
§ 3:15 Bottom Line: The Real “Problem” is NOT the Grant
Workforce

**CHAPTER 4. A STRATEGIC LOOK AHEAD
IN FEDERAL GRANTS**

I. INTRODUCTION

§ 4:1 The Way Forward

II. PRESIDENT’S MANAGEMENT AGENDAS

§ 4:2 President Trump’s First Term Management Agenda
§ 4:3 CAP Goal 8: Results-Oriented Accountability for Grants;
Leading to Related OMB Memoranda and Proposed
Rules

- § 4:4 President Biden's Management Agenda
- § 4:5 President Trump's Second Term Management Agenda

III. OMB'S INNOVATIVE APPROACHES TO GRANTS

- § 4:6 Evidence and Innovation
- § 4:7 OMB-Suggested Strategies

IV. THE UNIFORM GUIDANCE

- § 4:8 Background of the Uniform Guidance
- § 4:9 Whether the Uniform Guidance Will Achieve Its Goals

V. FUNDING FOR FEDERAL ASSISTANCE

- § 4:10 Funding for Federal Grants

CHAPTER 5. PROCESSES AND PLAYERS IN FEDERAL GRANTS

I. INTRODUCTION

- § 5:1 A Concert of Efforts and Organizations

II. PROCESSES OF FEDERAL ASSISTANCE

- § 5:2 The Formulation of the Executive Budget
- § 5:3 The Appropriation of Budget Authority
- § 5:4 Dividing Budget Authority Into Programs
- § 5:5 Awarding Grants and Obligating Appropriations
- § 5:6 Disbursement
- § 5:7 Program Reporting on Assistance Awards
- § 5:8 Evaluation of Assistance Programs

III. THE STAGES OF THE GRANT CYCLE

- § 5:9 The Preaward Stage
- § 5:10 The Award Stage
- § 5:11 The Implementation Stage
- § 5:12 The Closeout Stage

IV. KEY FEDERAL PLAYERS IN ASSISTANCE

- § 5:13 Several Players at Several Levels
- § 5:14 Congress
- § 5:15 The Congressional Research Service

TABLE OF CONTENTS

§ 5:16	The Congressional Budget Office
§ 5:17	The Comptroller General and the Government Accountability Office
§ 5:18	The Judiciary
§ 5:19	The President
§ 5:20	The Office of Management and Budget
§ 5:21	The Various Grant Boards and Committees
§ 5:22	The Chief Financial Officers Council
§ 5:23	The Council of the Inspectors General on Integrity and Efficiency
§ 5:24	The General Services Administration
§ 5:25	The Grantor Agencies
§ 5:26	Key Personnel in the Federal Grantor Agencies
§ 5:27	Government Personnel Other than Grant Staffs
§ 5:28	The Department of Health and Human Services' Departmental Appeals Board (DAB)

V. KEY NON-FEDERAL ENTITIES IN ASSISTANCE

§ 5:29	Single Audit Act Auditors
§ 5:30	Recipients
§ 5:31	Recipient Organizations
§ 5:32	Subrecipients
§ 5:33	Contractors
§ 5:34	Beneficiaries

CHAPTER 6. TRANSPARENCY, ETHICS AND SELF-DISCLOSURE IN FEDERAL ASSISTANCE

I. INTRODUCTION

§ 6:1	The Scope of Chapter 6
-------	------------------------

II. TRANSPARENCY IN GOVERNMENT SPENDING

§ 6:2	Transparency in Federal Financial Opportunities
§ 6:3	Data on Federal Awards and Spending

III. STANDARDS OF CONDUCT FOR GOVERNMENT PERSONNEL

§ 6:4	The Need for Rules
§ 6:5	Gifts to Government Employees
§ 6:6	Free Attendance at Functions
§ 6:7	Awards and Honors for Federal Employees

- § 6:8 Travel and Travel Expenses for Federal Employees
- § 6:9 Impartiality by Federal Employees
- § 6:10 Agency Endorsement of Organizations, Products, or Persons
- § 6:11 Permissible Use of Title or Agency's Name
- § 6:12 Giving Personal Recommendations
- § 6:13 Use of Government Information
- § 6:14 Federal Agency Ethics Advisors

IV. INDEPENDENT WATCHDOGS OF GOVERNMENT SPENDING

- § 6:15 Citizens Against Fraud, Waste, and Abuse

V. INSPECTORS GENERAL

- § 6:16 IGs and Their Purpose
- § 6:17 Inspector General Inspections and Evaluations
- § 6:18 Inspector General Audits
- § 6:19 Inspector General Investigations
- § 6:20 Other Inspector General Inquiries
- § 6:21 Inspectors General Can Check Into Things—No Matter What You Call It
- § 6:22 Federal Employees' Rights and Participation in IG Inspections, Audits, and Investigations
- § 6:23 Non-Federal Employees' Participation in IG Inspections, Audits, and Investigations

VI. RECIPIENT SELF-DISCLOSURE OF NEGATIVE INFORMATION

- § 6:24 The Regulatory Requirements for Standards and Self-Reporting/Disclosure
- § 6:25 Recipient Disclosure of Conflicts of Interest
- § 6:26 Recipient Disclosure of Criminal Conduct
- § 6:27 Mandatory Disclosures

VII. AN AGENCY CONFLICT OF INTEREST POLICY

- § 6:28 EPA's Final Financial Assistance Conflict of Interest Policy

TABLE OF CONTENTS

**PART 2. FUNDAMENTAL LEGAL
CONSIDERATIONS AFFECTING
GRANTS**

**CHAPTER 7. THE CONSTITUTIONAL
ISSUES OF FEDERAL GRANTS**

I. INTRODUCTION

- § 7:1 Constitutional Issues
- § 7:2 Summary of the State of the Law

II. BACKGROUND

- § 7:3 A Constitutional Foundation for Assistance
- § 7:4 Initial Constitutional Challenges
- § 7:5 The Key Constitutional Issues
- § 7:6 The Supreme Court Identifies Assistance Authority
- § 7:7 The Supreme Court Expands on the Concept of
“General Welfare”
- § 7:8 “Spending Power” and Other Authority May Apply
- § 7:9 Conditions on Federal Assistance: The Early Days
- § 7:10 “Cooperative Federalism”
- § 7:11 A Clear Decision on Conditions: *Steward Machine*
- § 7:12 A Litany of Decisions Upholding Federal Conditions on
Assistance

**III. CHALLENGES TO CONDITIONS THAT
IMPINGE ON CONSTITUTIONAL RIGHTS**

- § 7:13 First Amendment Challenges

IV. THE STATE OF THE LAW TODAY

- § 7:14 Federal Conditions on Assistance are Permitted, But
They Must Not Be Unconstitutional
- § 7:15 Conditions Must be in Furtherance of the General
Welfare and Reasonably Related to the Purpose of the
Assistance
- § 7:16 Conditions on Assistance Must be Unambiguous
- § 7:17 The Conditions on Assistance Must be Otherwise
Constitutional
- § 7:18 Recipients Cannot be Coerced into Accepting
Conditions—The Patient Protection and Affordable
Care Act

CHAPTER 8. FEDERAL FISCAL LAW AND GRANTS

I. INTRODUCTION

- § 8:1 Federal Fiscal Law and Assistance
- § 8:2 The Importance of Fiscal Law
- § 8:3 Appropriations and Outlays
- § 8:4 The Concept of “Availability”
- § 8:5 The Concept of an “Obligation”

II. SOURCES OF FISCAL LAW

- § 8:6 Fiscal Law in the Constitution
- § 8:7 The “Power of the Purse”
- § 8:8 Fiscal Law in Legislation
- § 8:9 Authorities and Devices in Annual Legislation
- § 8:10 The Interpretation of Appropriations
- § 8:11 Sources of Fiscal Law Interpretation

III. THE AUTHORITY AND ROLES OF THE COMPTROLLER GENERAL AND THE ATTORNEY GENERAL

- § 8:12 Two Leading Fiscal Law Authorities
- § 8:13 The Comptroller General and the Government Accountability Office
- § 8:14 The Attorney General and the Department of Justice
- § 8:15 The Dispute Over Fiscal Law Authority
- § 8:16 Executive Branch Requests for Comptroller General Opinions

IV. THE AVAILABILITY OF APPROPRIATIONS AS TO PURPOSE

- § 8:17 The “Purpose Statute”
- § 8:18 Analysis for Determining the Purpose of an Appropriation—The Comptroller General’s “Three-Part Test”
- § 8:19 —Test One: Specifically Set Out in the Law or the “Necessary Expense Doctrine”
- § 8:20 —Test Two: The Expenditure is Not Otherwise Prohibited by Law
- § 8:21 —Test Three: The Expenditure is Not Otherwise Provided for in Another Appropriation
- § 8:22 Agency Discretion in the Use of Lump Sum Appropriations

TABLE OF CONTENTS

V. THE AVAILABILITY OF APPROPRIATIONS AS TO TIME

- § 8:23 An Introduction to Time
- § 8:24 The “Time Statute”
- § 8:25 The Basic Time Rules
- § 8:26 Appropriations by their Periods of Time Availability
- § 8:27 The “Bona Fide Need Rule” and the Concept of “Severability” in Grant Awards

VI. THE AVAILABILITY OF APPROPRIATIONS AS TO AMOUNT AND THE “ANTIDEFICIENCY ACTS”

- § 8:28 Amounts Available and Over-Obligations
- § 8:29 The Antideficiency Acts
- § 8:30 Apportionments and Subdivisions of Apportionments
- § 8:31 Common Violations of the Antideficiency Acts
- § 8:32 Penalties for Those Responsible for Violating the Antideficiency Act

VII. OTHER PRINCIPLES OF FISCAL LAW THAT AFFECT FEDERAL GRANT PRACTICE

- § 8:33 Augmentation and Miscellaneous Receipts
- § 8:34 Advance Payments
- § 8:35 Reprogramming and Transfers
- § 8:36 Periods of Available Funding Under Grant Awards
- § 8:37 The Federal Character of Assistance Funding in the “Hands of the Recipient”

CHAPTER 9. PRINCIPLES OF AGREEMENT AND STATUTORY INTERPRETATION

I. INTRODUCTION

- § 9:1 The Importance of Agreement Interpretation and Statutory Construction
- § 9:2 The Purpose of this Chapter

II. PRELIMINARY CONSIDERATIONS—WHAT THE GRANT AGREEMENT CONSISTS OF

- § 9:3 The Total Grant Agreement
- § 9:4 Establishing the Agreement’s Content—The Parol Evidence Rule

- § 9:5 Part of Every Agreement—The Duty of Good Faith and Fair Dealing

III. AGREEMENT AND CONTRACT INTERPRETATION

- § 9:6 Authorities and Principles of Agreement Interpretation
§ 9:7 A Core Concept: The Preference for Objective Interpretation and the Language of the Documents
§ 9:8 Interpretation Functions and Ascertaining the “Intent of the Parties”
§ 9:9 “Interpretation” is About “Law,” Not “Facts”
§ 9:10 The Subject Matter of Interpretation
§ 9:11 The Process of Agreement or Contract Interpretation

IV. THE PRINCIPLES OF AGREEMENT AND CONTRACT INTERPRETATION APPLICABLE TO ALL EVIDENCE

- § 9:12 Principle: Consider All the Circumstances
§ 9:13 Principle: Interpret with Deference to the Principal Purpose of the Agreement
§ 9:14 Interpretative Preferences

V. PRINCIPLES OF AGREEMENT INTERPRETATION INVOLVING JUST THE LANGUAGE OF THE AGREEMENT (INTRINSIC EVIDENCE)

- § 9:15 Principle: Interpret an Agreement as a Whole
§ 9:16 Principle: Assign Common Language Its Common Meaning
§ 9:17 Principle: Assign Technical Language its Technical Meaning
§ 9:18 Principle: Specific Terms Prevail Over General Terms
§ 9:19 Principle: Express Terms Prevail Over Extrinsic Evidence
§ 9:20 Principles on the Interpretation of Lists
§ 9:21 Principle: Specially Written or Negotiated Terms Carry More Weight Than Stock Language
§ 9:22 Principle: A Court Can Supply an Omitted Term

VI. PRINCIPLES OF INTERPRETATION INVOLVING MATTERS OUTSIDE THE AGREEMENT (EXTRINSIC EVIDENCE)

- § 9:23 The Plain Meaning Rule—A Qualifying Rule on the Use of Extrinsic Evidence

TABLE OF CONTENTS

- § 9:24 Principle: Things That Happen Before Award Can Explain the Meaning of an Agreement
- § 9:25 Principle: Silence Betokens Consent
- § 9:26 Principle: The Parties' Conduct is Evidence of Their Interpretation
- § 9:27 How the Parties Carried Out Their Other Agreements Shows Their Interpretation of the Disputed Agreement
- § 9:28 Principle: Trade Usage Can Help Interpret Agreements

VII. RESOLVING AMBIGUITIES: THE DOCTRINE OF CONTRA PROFERENTEM

- § 9:29 An Ancient Tie-Breaking Doctrine
- § 9:30 The "Elements" of Contra Proferentem
- § 9:31 The Federal Twist to Contra Proferentem

VIII. OTHER PRINCIPLES AND AIDS IN AGREEMENT INTERPRETATION

- § 9:32 Agreement Definitions
- § 9:33 Orders of Precedence
- § 9:34 The Effect of Statutes on Grants

IX. STATUTORY CONSTRUCTION

- § 9:35 The Interpretation of Laws and Regulations
- § 9:36 How Statutes Affect Agreements and Contracts

X. THE MATERIALS OF STATUTORY CONSTRUCTION

- § 9:37 Laws and Related Information
- § 9:38 The Primary Source of Statutory Interpretation: The Law Itself

XI. EXTRINSIC INFORMATION IN STATUTORY CONSTRUCTION

- § 9:39 The Role of Extrinsic Evidence in Statutory Construction
- § 9:40 The Best External Evidence of Statutory Construction: Legislative History

XII. PRINCIPLES OF STATUTORY CONSTRUCTION

- § 9:41 The Canons of Statutory Construction

- § 9:42 Canon: The Words of the Law Are Paramount
- § 9:43 Canon: The Rule Against Absurd Results
- § 9:44 Canon: Honor the Principal Purpose of the Law
- § 9:45 Canons Pertaining to the Statutory Language Itself
- § 9:46 Presumptions and Preferences in Statutory Construction
- § 9:47 *Chevron* is Overruled: The New Administrative Landscape
- § 9:48 Knowledge of the Agency's Interpretation
- § 9:49 The Rule of Last Expression
- § 9:50 A Nice Review, From Washington State

CHAPTER 10. THE LEGAL NATURE OF GRANT AGREEMENTS

I. INTRODUCTION

- § 10:1 The Contract Issue

II. A PRIMER ON CONTRACT LAW

- § 10:2 Definitions of a Contract
- § 10:3 The Elements of a Contract
- § 10:4 The Elements of Offer and Acceptance
- § 10:5 The Significance of the Basic Contract Law of Offer and Acceptance in Grant Formation
- § 10:6 The Element of Consideration
- § 10:7 The "Fourth Element" of a Contract with the Government: Authority
- § 10:8 Apparent Authority
- § 10:9 The Significance of Offer, Acceptance, and Authority in Federal Grant Practice

III. LEGAL THEORIES ABOUT ASSISTANCE AGREEMENTS AS CONTRACTS

- § 10:10 Assistance Agreements Have Many Legal Facets
- § 10:11 The "Assistance as Contract" Analysis
- § 10:12 The "Grant Not as a Contract" Perspective
- § 10:13 Some Comparisons of Grants and Contracts
- § 10:14 The Significance of a Contractual Relationship
- § 10:15 The Significance of "No Contract"
- § 10:16 The "Right Answer": Most Assistance Awards are Contracts

TABLE OF CONTENTS

**CHAPTER 11. GOVERNMENT LIABILITY
FOR THE ACTS OF RECIPIENTS**

I. INTRODUCTION

- § 11:1 The Issue of the Government's Liability
- § 11:2 General Rule: No Federal Government Liability in Contract
- § 11:3 General Rule: No Federal Government Liability in Tort

**II. GOVERNMENT CONTRACTUAL LIABILITY TO
THIRD PARTIES FOR THE ACTS OF
RECIPIENTS**

- § 11:4 Privity of Contract Required
- § 11:5 Privity of Contract in Assistance Scenarios
- § 11:6 The Effect of Extensive Government Regulation Bearing on the Government's Contractual Liability
- § 11:7 The Recipient-Sponsored Claims Approach
- § 11:8 Employment Contract Obligations
- § 11:9 The "Deemed Privity" Theory

**III. GOVERNMENT LIABILITY FOR THE
NEGLIGENT ACTS OF RECIPIENTS**

- § 11:10 Government Tort Liability and the Federal Tort Claims Act
- § 11:11 A Recipient Organization is not a Federal Agency
- § 11:12 Discretionary Acts of Government Employees or Controlled Persons
- § 11:13 Federal Employees for Purposes of Federal Government Tort Liability
- § 11:14 The Actor's "Scope of Employment"
- § 11:15 "Negligent" Government Standards For, or in the Administration of, the Grant
- § 11:16 Individual Government Employee Liability Under a "Constitutional Tort"

PART 3. AGENCY PLANNING FOR GRANTS

CHAPTER 12. THE FEDERAL GRANT AND COOPERATIVE AGREEMENT ACT

I. INTRODUCTION

§ 12:1 The Act

II. BACKGROUND: THE COMMISSION ON GOVERNMENT PROCUREMENT

- § 12:2 The Commission's Charter
- § 12:3 The Commission's Assessment of the Impact of Assistance on Procurement
- § 12:4 The Commission's Recognition of Problems in Procurement and Assistance
- § 12:5 The Effect of the Problems
- § 12:6 The Commission's Conclusions and Recommendations
- § 12:7 Congressional Reaction to the Commission's Report
- § 12:8 The Key Legislation: The Federal Grant and Cooperative Agreement Act

III. THE FEDERAL GRANT AND COOPERATIVE AGREEMENT ACT

- § 12:9 Passage of the Act
- § 12:10 The Original Act and its Subsequent History and Codification
- § 12:11 Key Features of the Federal Grant and Cooperative Agreement Act
- § 12:12 What the Federal Grant and Cooperative Agreement Act Does Not Do
- § 12:13 Exemptions from Grant Act Coverage
- § 12:14 The Federal Grant and Cooperative Agreement Act of 1977

CHAPTER 13. THE STATUTORY AUTHORITY FOR ASSISTANCE AWARDS

I. INTRODUCTION

- § 13:1 The Legal Authority for Assistance
- § 13:2 The Federal Grant and Cooperative Agreement Act Does Not Bestow Assistance Authority

TABLE OF CONTENTS

§ 13:3 Grant Authority Need Not Explicitly Authorize Grants

II. THE AUTHORITY TO CONTRACT AND TO GRANT

§ 13:4 Inherent Authority to Contract

§ 13:5 Specific Authority Required for Assistance

§ 13:6 Agency Requirements to Cite the Authority

III. AUTHORITY TO AWARD GRANTS AND COOPERATIVE AGREEMENTS

§ 13:7 Sources of Legislative Authority for Grants

§ 13:8 Assistance Authority is Not Funding

§ 13:9 Identifying the Assistance Authority

§ 13:10 Federal Grants to Federal Agencies

IV. EXAMPLES OF STATUTORY AUTHORITY FOR ASSISTANCE AGREEMENTS

§ 13:11 The National Security Agency

§ 13:12 The Department of Defense

§ 13:13 The Department of Justice

§ 13:14 The Environmental Protection Agency

§ 13:15 The National Endowment for the Arts

§ 13:16 “Program Legislation”—The Drug-Free Communities Program

CHAPTER 14. SELECTING THE PROPER LEGAL RELATIONSHIP: ASSISTANCE OR PROCUREMENT

I. INTRODUCTION

§ 14:1 Choosing Between Grants and Procurement Contracts

II. STATUTORY CRITERIA FOR ASSISTANCE OR PROCUREMENT

§ 14:2 The Temptations of Expediency

§ 14:3 The key selection factor: the principal purpose of the instrument

§ 14:4 Agency Discretion in the Selection of the Instrument

III. THE SELECTION ISSUE IN PERSPECTIVE

§ 14:5 The Agency’s Exercise of Discretion

- § 14:6 The Importance of Procurement vs. Assistance
- § 14:7 Raising the Award Selection Issue

IV. DECISIONS APPLYING THE CRITERIA IN SELECTING ASSISTANCE VS. PROCUREMENT

- § 14:8 The Significance of Satisfying the Federal Agency's
Immediate Needs
- § 14:9 A Final Review of the Criteria
- § 14:10 Beneficiaries
- § 14:11 Profit or Fee as a Discriminator in Selecting
Assistance or Procurement
- § 14:12 Agency Procedures to Document the Selection
Decision

CHAPTER 15. SELECTING THE PROPER ASSISTANCE RELATIONSHIP: GRANT OR COOPERATIVE AGREEMENT

I. INTRODUCTION

- § 15:1 Selecting the Appropriate Assistance Relationship
- § 15:2 The Key Distinction Between Grants and Cooperative
Agreements
- § 15:3 “Substantial Involvement”
- § 15:4 Phantom “Substantial Involvement” by the Agency
- § 15:5 Sparse Statutory Guidance on “Substantial
Involvement”
- § 15:6 Legislative History on Federal Participation in
Cooperative Agreements

II. OFFICE OF MANAGEMENT AND BUDGET GUIDANCE ON THE USE OF COOPERATIVE AGREEMENTS

- § 15:7 The OMB's Role
- § 15:8 The OMB's Factors on Substantial Involvement
- § 15:9 The OMB's Policy on Agency Substantial Involvement:
Keep it to a Minimum

III. FEDERAL AGENCIES' GUIDANCE ON SELECTING COOPERATIVE AGREEMENTS

- § 15:10 Agency Guidance on Substantial Involvement

IV. THE COOPERATIVE AGREEMENT'S TERMS

- § 15:11 Careful Draftsmanship Required

CHAPTER 16. TYPES OF GRANTS

I. INTRODUCTION

- § 16:1 The Variety of Federal Assistance
- § 16:2 “Types” of Grants and Cooperative Agreements

II. TYPES OF GRANTS BASED ON ASSISTANCE STRATEGY—THE BASIC CLASSIFICATION OF GRANTS

- § 16:3 “Project” or “Categorical,” and “Block” or “Formula” Grants
- § 16:4 Categorical or Project Grants
- § 16:5 Formula or Block Grants

III. OTHER WAYS OF LOOKING AT GRANT “TYPES”

- § 16:6 Agency and Program-Specific Terminology for Grants
- § 16:7 Types of Grants Based on Agency Discretion
- § 16:8 Types of Grants Based on Funding
- § 16:9 Types of Grants by Legal Pedigree
- § 16:10 Performance-Based Grants

IV. FIXED AMOUNT AWARDS

- § 16:11 Innovation in Practice—The Fixed Amount Grant
- § 16:12 Fixed Amount Awards Under the Uniform Guidance
- § 16:13 Using Fixed Amount Awards
- § 16:14 Restrictions on the Use of Fixed Amount Awards
- § 16:15 Pricing Fixed Amount Awards
- § 16:16 Payment Under Fixed Amount Awards
- § 16:17 “Profit” Under Fixed Amount Awards
- § 16:18 Reporting Under Fixed Amount Awards
- § 16:19 Completion of the Fixed Amount Award
- § 16:20 Changes to Fixed Amount Awards

V. QUASI GRANT RELATIONSHIPS

- § 16:21 Grant-Looking Agreements
- § 16:22 Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) Awards
- § 16:23 Sikes Act Cooperative Agreements
- § 16:24 Other Transactions
- § 16:25 Cooperative Research and Development Agreements (CRADAs)

CHAPTER 17. GRANT REGULATIONS AND FORMS

I. INTRODUCTION

- § 17:1 Grant Regulations
- § 17:2 The Uniform Guidance and Grant Regulations

II. GRANT GOVERNING AUTHORITIES

- § 17:3 Basic Authorities
- § 17:4 The Code of Federal Regulations
- § 17:5 OMB Issuances
- § 17:6 “Common Rules”
- § 17:7 “Cross-Cutting” Rules
- § 17:8 The OMB Grant Circulars—FYI Only
- § 17:9 Treasury Regulations
- § 17:10 Agency “Grant Regulations”

III. THE OFFICE OF MANAGEMENT AND BUDGET’S UNIFORM GUIDANCE

- § 17:11 History of the Uniform Guidance, “The Super Circular”
- § 17:12 The Name of the OMB Issuance
- § 17:13 Legal Status of the Uniform Guidance
- § 17:14 Applicability of the Uniform Guidance
- § 17:15 Exceptions to the Uniform Guidance
- § 17:16 Authority for the Uniform Guidance
- § 17:17 The Uniform Guidance’s Supersession
- § 17:18 OMB Responsibilities
- § 17:19 Effective Date of the Uniform Guidance
- § 17:20 The Agencies’ Adoption of the Uniform Guidance
- § 17:21 The Components of the Uniform Guidance
- § 17:22 The Organization and Contents of the Uniform Guidance
- § 17:23 Agency Grant Regulations

IV. GRANT FORMS

- § 17:24 A Topic in Transition
- § 17:25 Today’s Grant Forms
- § 17:26 Where to Find the Forms

PART 4. FINDING AND APPLYING FOR GRANTS

CHAPTER 18. GRANT RESOURCES

I. INTRODUCTION

- § 18:1 The Need and the Resources
- § 18:2 Assistance Resources Generally

II. FEDERAL EXECUTIVE BRANCH RESOURCES

- § 18:3 The Assistance Listings
- § 18:4 Grants.gov
- § 18:5 The Office of Management and Budget
- § 18:6 The Federal Register
- § 18:7 The Code of Federal Regulations
- § 18:8 Benefits.gov
- § 18:9 Contract Opportunities on Sam.gov (formerly FedBizOpps.gov)
- § 18:10 USA.gov
- § 18:11 USASpending.gov
- § 18:12 The Former Federal Assistance Award Data System
- § 18:13 The Federal Audit Clearinghouse
- § 18:14 The Federal Demonstration Partnership (FDP)
- § 18:15 The Grantor Agencies

III. CONGRESSIONAL RESOURCES

- § 18:16 The House of Representatives Homepage
- § 18:17 The Congressional Research Service
- § 18:18 The Government Accountability Office

IV. STATE RESOURCES

- § 18:19 States as Grantees or as Advisors

V. NONFEDERAL AND PRIVATE RESOURCES

- § 18:20 Grantsmanship Professionals, Mentors, and Advocates
- § 18:21 Commercial Resources

CHAPTER 19. COMPETITION FOR ASSISTANCE AWARDS

I. INTRODUCTION

- § 19:1 A Basic Competition Issue: Mandatory or Discretionary Awards
- § 19:2 No Governmentwide Competition Standards for Assistance
- § 19:3 The Pursuit of Competition

II. STATUTORY AND REGULATORY GUIDANCE ON ASSISTANCE COMPETITION

- § 19:4 The Federal Grant and Cooperative Agreement Act
- § 19:5 The Uniform Guidance on Competition
- § 19:6 Agency-Specific Competition Statutes
- § 19:7 Agency Regulations on Competition

III. EFFECTING COMPETITION

- § 19:8 Characteristics of Competition
- § 19:9 Notice of the Funding Opportunity
- § 19:10 Impartial Evaluation for Merit and Program Relevance
- § 19:11 Limited or Preferenced Competition
- § 19:12 Shortfalls in Competition

CHAPTER 20. THE GRANT OPPORTUNITY NOTICE

I. INTRODUCTION

- § 20:1 Full and Fair Notice
- § 20:2 OMB Guidance and Agency Regulations on Notice of Funding Opportunities

II. PUBLIC NOTICE OF FEDERAL FINANCIAL ASSISTANCE PROGRAMS

- § 20:3 Notice in the Assistance Listings
- § 20:4 Required Information for the Assistance Listings

III. REQUIRED CONTENT OF FUNDING OPPORTUNITIES

- § 20:5 The Summary Notice

TABLE OF CONTENTS

- § 20:6 The Notice Period
- § 20:7 The Full Text of the Funding Opportunity
- § 20:8 The Uniform Guidance Notice of Funding Opportunity

IV. EXCERPTS OF A FUNDING OPPORTUNITY NOTICE

- § 20:9 An Actual Notice

CHAPTER 21. GOVERNMENT DATABASES ON RECIPIENT PERFORMANCE AND INTEGRITY

I. INTRODUCTION

- § 21:1 Assessments of Recipient Performance and Integrity
- § 21:2 The Government's Scheme
- § 21:3 The Legislative and Regulatory Framework
- § 21:4 Summary of Regulatory Reporting Requirements

II. RECIPIENT DISCLOSURE REQUIREMENTS

- § 21:5 Disclosure of Conflicts of Interest
- § 21:6 Disclosure of Criminal Conduct
- § 21:7 Reporting of "Credible Evidence" of Certain Violations of Law—Appendix XII of the Uniform Guidance
- § 21:8 Appendix XII

III. FEDERAL AGENCY REPORTING REQUIREMENTS

- § 21:9 Agency Reports of Applicant Nonqualification Determinations
- § 21:10 Agency Reports of Applicant Terminations for Noncompliance
- § 21:11 Agency Reports of Administrative Agreements in Exclusion Proceedings

IV. SECTION 872 CODIFICATION

- § 21:12 The Government Database on Performance and Integrity

CHAPTER 22. APPLYING FOR GRANTS

I. INTRODUCTION

- § 22:1 Strategic Considerations—Should You Apply?

- § 22:2 The Grant Writers' Art
- § 22:3 Key Features of a Grant Application
- § 22:4 Straight Talk on Getting a Grant

II. THE APPLICATION PACKAGE

- § 22:5 The Required Submissions

III. ADMINISTRATIVE ASPECTS OF ASSISTANCE APPLICATION

- § 22:6 Follow the Instructions!
- § 22:7 Be on Time: "Late is Late"
- § 22:8 The Applicant Organization and Its Authority

IV. THE SUBSTANTIVE CONTENT OF THE ASSISTANCE APPLICATION

- § 22:9 What the Agencies Are Looking For
- § 22:10 Keying on the Program Announcement: The Application of the Village Thespians
- § 22:11 The "Scorecard" Analysis and Catchy Proposal Summary

V. FINALE

- § 22:12 Getting to a Final Product
- § 22:13 Some Dark-Side Observations on Grant Applications
- § 22:14 A Final Tip on Grant Applications

VI. APPLICATION FORMS

- § 22:15 The Suite of Application Forms

CHAPTER 23. GRANT BUDGET PROPOSALS

I. INTRODUCTION

- § 23:1 The Budget Function

II. BUDGET CONTENT

- § 23:2 Basic Budget Components
- § 23:3 Budget Advice and Strategies
- § 23:4 Agency Requirements on Budget Items
- § 23:5 Drafting a Budget
- § 23:6 The Approved Budget and Ultimate Allowability

TABLE OF CONTENTS

III. STANDARD BUDGET FORMS AND SAMPLE BUDGETS

- § 23:7 SF-424A, Budget Information—Nonconstruction Programs
- § 23:8 SF-424C, Budget Information—Construction Programs
- § 23:9 Sample Budget for Grant Proposals
- § 23:10 An Agency Provided Budget—From the NEH

PART 5. EVALUATION, SELECTION, AND GRANT AWARDS

CHAPTER 24. MERIT EVALUATION AND APPLICANT SELECTION

I. INTRODUCTION

- § 24:1 The Agency's Treatment of Applications
- § 24:2 OMB Guidance and Agency Regulation of Merit Evaluation
- § 24:3 About Evaluation for Merit

II. EVALUATION PROCESSES AND COMPONENTS

- § 24:4 Overview of the Evaluation Process
- § 24:5 The Evaluated Areas
- § 24:6 Evaluation for Substantive Merit
- § 24:7 The Role of "Price" in Evaluations
- § 24:8 The Role of Cost Sharing in Selecting Applicants

III. A PROCUREMENT-TYPE PROCESS OF EVALUATION

- § 24:9 A Procurement Model of Evaluation
- § 24:10 The Award Decision-Making Authority
- § 24:11 The Grant Officer's Role in Applicant Selection

IV. A TYPICAL EVALUATION CYCLE

- § 24:12 Initial Screening of Applications
- § 24:13 Evaluation for Risk
- § 24:14 Evaluation of Applicant Conflicts of Interest
- § 24:15 Evaluation Processes
- § 24:16 Program Relevance Evaluation

- § 24:17 Beneficiary Comments
- § 24:18 Financial or Business Plan Evaluation
- § 24:19 Management Capability
- § 24:20 The OMB's Uniform Guidance on Evaluation Techniques

V. EVALUATOR SUBJECTIVITY AND OTHER CONCERNS

- § 24:21 Evaluator Subjectivity
- § 24:22 Evaluator Conflicts of Interest
- § 24:23 Evaluator Bias

VI. EVALUATION PRODUCTS

- § 24:24 Scoring and Ranking

VII. PREAWARD COMMUNICATIONS AND NEGOTIATIONS WITH APPLICANTS

- § 24:25 Preselection Discussions Are Permitted
- § 24:26 Selection and Notice of Selection for Award
- § 24:27 Preaward Clarification and Negotiation

VIII. IMPROVEMENTS NEEDED IN EVALUATION

- § 24:28 Areas for Improvement
- § 24:29 Errors Still Happen—But Are Addressed
- § 24:30 How Applications are Selected for Award—A Program's Explanation

CHAPTER 25. RISK ASSESSMENTS OF GRANT APPLICANTS

I. INTRODUCTION

- § 25:1 “Responsibility” in Federal Grant Practice
- § 25:2 OMB Guidance and Agency Regulations on Applicant Risk and Specific Conditions

II. RESPONSIBILITY AND RISK

- § 25:3 The Concept of “Responsibility” and Risk Assessment
- § 25:4 Awarding Agency Assessments of Responsibility and Risk

III. RISK ASSESSMENT UNDER THE UNIFORM GUIDANCE

- § 25:5 The Uniform Guidance on Risk Assessment

TABLE OF CONTENTS

- § 25:6 Required Sources of Information in Risk Assessment
- § 25:7 The Risk Assessment Framework
- § 25:8 The Uniform Guidance’s Risk-Based Approach

IV. SPECIFIC CONDITIONS

- § 25:9 Specific Conditions
- § 25:10 Procedure for Imposing Specific Conditions
- § 25:11 Compliance with Specific Conditions
- § 25:12 An Example of Special Conditions Imposed During an Award
- § 25:13 Agency Determinations of Applicant Responsibility

CHAPTER 26. THE LEGALLY EFFECTIVE AWARD OF THE GRANT

I. INTRODUCTION

- § 26:1 The Award of the Grant
- § 26:2 First Things First—Who is the Grantee?
- § 26:3 The Content of the Grant—The Total Agreement
- § 26:4 OMB Guidance on Grant Formation and Content

II. CONTRACT FORMATION IN THE EXCHANGE OF GRANT APPLICATIONS AND AGENCY RESPONSES

- § 26:5 The Withdrawal of Applicant Proposals
- § 26:6 Offers and Counteroffers in Grant Formation
- § 26:7 The Importance of Contract Law in the Grant Award Process—Redux
- § 26:8 The Labels of the Communications Do Not Control; It’s the Legal Substance
- § 26:9 An Illustrative Grant “Award”
- § 26:10 The Award of the Grant and the “Obligation” of the Federal Appropriation

III. THE UNIFORM GUIDANCE’S MINIMUM GRANT AWARD CONTENT

- § 26:11 All the Cards on the Table
- § 26:12 General Federal Award Information
- § 26:13 General Terms and Conditions
- § 26:14 Program-Specific Requirements
- § 26:15 Recipient Performance Goals
- § 26:16 Include Everything Else

CHAPTER 27. EXTERNAL COMPLIANCES AND CERTIFICATIONS

I. INTRODUCTION

- § 27:1 Compliance with the Total Grant
- § 27:2 “External” Requirements
- § 27:3 The Awarding Agency’s Obligation to Inform Recipients
of all the Requirements

II. KEY EXTERNAL REQUIREMENTS

- § 27:4 Numerous Compliance Requirements
- § 27:5 The Legal Effect of External Requirements
- § 27:6 Sources and Types of External Requirements
- § 27:7 Compliance Requirements for State, Local, and
Indian Tribal Governments
- § 27:8 Compliance Requirements Based on Status as an
Employer
- § 27:9 Compliance Requirements Based on Status as a
Recipient of Federal Funding
- § 27:10 Compliance Requirements for Educational Recipients
- § 27:11 Compliance Requirements for Research Recipients
- § 27:12 Compliance Requirements for Construction Recipients
- § 27:13 Compliance with Environmental Laws
- § 27:14 Compliance with Wildlife Laws
- § 27:15 Compliance with Various Preservation and Physical
Impact Laws
- § 27:16 Compliance with Privacy Protections
- § 27:17 Compliance with Everything
- § 27:18 No Compliance Requirement is Trivial

III. CERTIFICATIONS

- § 27:19 Binding Representations and Grant Obligations
- § 27:20 When Certifications Are Made
- § 27:21 Certification Language
- § 27:22 Certification Topics
- § 27:23 Standard Application Assurances
- § 27:24 A Certification Story—Heed the Lesson

CHAPTER 28. RIGHTS OF NONSELECTED APPLICANTS

I. INTRODUCTION

- § 28:1 The Nonselected Applicant’s Recourse

TABLE OF CONTENTS

II. THE ROLE OF THE GAO AND COURTS

- § 28:2 Protests to the GAO
- § 28:3 Suit in the Court of Federal Claims
- § 28:4 Applicant Recourse Under the Administrative Procedure Act

III. INDIVIDUAL AWARDING AGENCY RELIEF

- § 28:5 Individual Agency Approaches to Nonselected Applicants
- § 28:6 Components of an Appeal Process

PART 6. GRANT MANAGEMENT AND ADMINISTRATION

CHAPTER 29. INTERNAL CONTROL

I. INTRODUCTION

- § 29:1 Internal Control
- § 29:2 OMB Guidance and Agency Regulation on Internal Control

II. SOURCES OF GUIDANCE ON INTERNAL CONTROL

- § 29:3 Guidance and Structure in Internal Control
- § 29:4 OMB References for Guidance on Internal Control
- § 29:5 The Uniform Guidance on Internal Control
- § 29:6 The GAO's Standards of Internal Control in the Federal Government-The Green Book
- § 29:7 The Committee of Sponsoring Organizations (COSO) of the Treadway Commission
- § 29:8 The Binding Authority of the Green Book and COSO Framework
- § 29:9 The OMB Compliance Supplement on Internal Control in Compliance Audits
- § 29:10 OMB Circular A-123, Management's Responsibility for Internal Control (2004)

III. DEFINITIONS OF INTERNAL CONTROL

- § 29:11 Definitions
- § 29:12 OMB Definitions of Internal Control
- § 29:13 GAO's Definition of Internal Control

§ 29:14 The COSO's Definition of Internal Control

IV. CORE CONCEPTS AND METHODS OF INTERNAL CONTROL

- § 29:15 Stewardship
- § 29:16 Capacity
- § 29:17 Compliance
- § 29:18 Characteristics of Good Internal Control
- § 29:19 Objectives of Internal Control
- § 29:20 Internal Control Measures
- § 29:21 The Components of Internal Control
- § 29:22 The COSO Framework and GAO Green Book's
"Seventeen Principles"

V. INTERNAL CONTROL FOR RECIPIENTS

- § 29:23 The Importance of Internal Control for Recipients
- § 29:24 Sources of Guidance on Recipient Internal Control
- § 29:25 The Uniform Guidance on Internal Control
- § 29:26 The OMB Compliance Supplement on Recipient
Internal Control

VI. INTERNAL CONTROL IN FEDERAL AGENCIES

- § 29:27 Implementing Government Internal Control
- § 29:28 Assessing Government Internal Control
- § 29:29 Internal Control and Managing the Risk of Fraud—
The GAO Framework
- § 29:30 Laws Affecting Government Internal Control
- § 29:31 Observations on Federal Agencies' Internal Control
- § 29:32 Leadership and Management and Internal Control

VII. THE OMB COMPLIANCE SUPPLEMENT ON INTERNAL CONTROL

- § 29:33 The Compliance Supplement's Internal Control

CHAPTER 30. SUBAWARDS AND SUBRECIPIENTS

I. INTRODUCTION

- § 30:1 Recipients and Subrecipients
- § 30:2 Regulatory Governance of Subawards

TABLE OF CONTENTS

II. THE SUBAWARD RELATIONSHIP

- § 30:3 The Cardinal Rule: The Recipient is Solely Responsible to the Federal Government
- § 30:4 The Subrecipient's Responsibilities

III. DISTINGUISHING CONTRACTS FROM SUBAWARDS

- § 30:5 The Nonfederal Entities' Different Types of Legal Status
- § 30:6 The Important Distinction Between Subawards and Contracts
- § 30:7 Key Concepts and Definitions
- § 30:8 Characteristics of a Subaward
- § 30:9 Characteristics of a Contract
- § 30:10 Example of a Subrecipient and Contractor
- § 30:11 Some Distinctions Between Subawards and Contracts

IV. SELECTION OF SUBRECIPIENTS

- § 30:12 The Need for Recipient Due Diligence
- § 30:13 Subrecipient Evaluation Techniques

V. SUBAWARD CONTENT

- § 30:14 OMB Guidance on Subaward Content
- § 30:15 The Administrative Content of a Subaward
- § 30:16 The Substantive Content of a Subaward

VI. RECIPIENT SUBAWARD MONITORING

- § 30:17 Recipient Oversight of its Subawards
- § 30:18 OMB Guidance on Risk Assessment in Subrecipient Monitoring
- § 30:19 Monitoring Subrecipients
- § 30:20 Recipient Site Visits to the Subrecipient
- § 30:21 Recipient Assistance to the Subrecipient
- § 30:22 Recipient Enforcement of Remedies on a Subrecipient

VII. AUDITS OF RECIPIENT SUBAWARD MANAGEMENT

- § 30:23 Audits
- § 30:24 Compliance Audits of Subaward Management
- § 30:25 Audits of Internal Control of Subaward Management

CHAPTER 31. STANDARDS OF GRANT FINANCIAL MANAGEMENT

I. INTRODUCTION

- § 31:1 Financial Management Overview
- § 31:2 OMB Guidance and Agency Regulation of Financial Management

II. REQUIRED STANDARDS FOR FINANCIAL MANAGEMENT

- § 31:3 Standards for State Financial Management
- § 31:4 Accrual Accounting
- § 31:5 Agency Review of Recipient Financial Management
- § 31:6 Basic Financial System Capabilities
- § 31:7 Consequences of Inadequate Financial Management
- § 31:8 Financial Management Capability is a Mandatory Requirement

III. AUDITS OF FINANCIAL MANAGEMENT

- § 31:9 Audits
- § 31:10 Compliance Audits of Financial Management
- § 31:11 Audits of Internal Control of Financial Management

CHAPTER 32. PAYMENT TO NON-STATE RECIPIENTS

I. INTRODUCTION

- § 32:1 Getting Paid
- § 32:2 OMB Guidance and Agency Regulation of Payment to Non-State Recipients
- § 32:3 Payment Regulations for States

II. BASIC PAYMENT PRINCIPLES

- § 32:4 A Basic Goal—Prompt Disbursement
- § 32:5 Use of Other Financial Resources

III. PAYMENT METHODS

- § 32:6 The Basic Grant Payment Methods
- § 32:7 Agency Directions on Payment
- § 32:8 Advance Payments
- § 32:9 Payment by Reimbursement

TABLE OF CONTENTS

§ 32:10 Payment by Working Capital Advance

IV. NON-PAYMENT TO RECIPIENTS

§ 32:11 Not Getting Paid

§ 32:12 Government Actions Regarding Improper Payments

V. PAYMENT FORMS

§ 32:13 Grant Forms for Payment.

CHAPTER 33. PAYMENT TO STATE RECIPIENTS

I. INTRODUCTION

§ 33:1 State Recipients

§ 33:2 Agency Regulation of Payment to State Recipients

§ 33:3 State Government

II. PAYMENT CONCERNS WITH STATES

§ 33:4 Payments to State Recipients

§ 33:5 The Evolution of State Payment Law

§ 33:6 Payment Methods to States

III. TREASURY-STATE AGREEMENTS

§ 33:7 The “TSA”

§ 33:8 Contents of Treasury-State Agreements

CHAPTER 34. PROGRAM INCOME

I. INTRODUCTION

§ 34:1 Income From Grant Activities

§ 34:2 OMB Guidance and Agency Regulation on Program
Income

II. PROGRAM INCOME

§ 34:3 Program Income Defined

§ 34:4 Basic Policy on Program Income

§ 34:5 Costs of Generating Program Income

§ 34:6 Government Revenues and Program Income

§ 34:7 Property Proceeds and Program Income

§ 34:8 Interest and Donations

§ 34:9 Treatment of Royalties as Program Income

III. THE APPLICATION OF PROGRAM INCOME

§ 34:10 Basic Rule on the Application of Program Income

§ 34:11 Program Income as a Deduction from the Federal Award

§ 34:12 Program Income as an Addition to the Federal Award

§ 34:13 Program Income to Satisfy Sharing or Matching Obligations

§ 34:14 Recipient and Subrecipient Program Income

§ 34:15 Program Income for Institutions of Higher Education and Nonprofits

§ 34:16 Program Income Earned After the Award Period

IV. AUDITS OF RECIPIENT MANAGEMENT OF PROGRAM INCOME

§ 34:17 Audits

§ 34:18 Compliance Audits of Program Income Management

§ 34:19 Audits of Internal Control of Program Income Management

CHAPTER 35. SHARED GRANT RESOURCING

I. INTRODUCTION

§ 35:1 Shared Contributions

§ 35:2 OMB Guidance and Agency Regulations on Shared Resourcing

II. CONCEPTS AND RATIONALES OF SHARED RESOURCING

§ 35:3 Key Terms and Concepts in Shared Resourcing

§ 35:4 Sharing or Matching in General

§ 35:5 The Federal Sharing Decision

§ 35:6 Mandatory and Discretionary Sharing

§ 35:7 Waiving the Recipient's Contribution

III. ISSUES IN SHARED RESOURCING

§ 35:8 The Application of Shared Contributions

§ 35:9 Advance Payment and Shared Resourcing

§ 35:10 The Amount Required Under a Shared Funding Program

TABLE OF CONTENTS

- § 35:11 Declining Federal Shares
- § 35:12 Aggregate Match
- § 35:13 “Hard” and “Soft” Matches
- § 35:14 Matching One Award with Funds from Another Award
- § 35:15 Combining Federal Grants for the Same Effort
- § 35:16 Allowing the Nonfederal Share

IV. MAINTENANCE OF EFFORT

- § 35:17 Keeping Up the Good Work
- § 35:18 Various Maintenance of Effort Scenarios
- § 35:19 “Nonsupplant”
- § 35:20 Waiving or Suspending Maintenance Requirements

V. RECIPIENT MANAGEMENT AND AGENCY REMEDIES IN SHARED RESOURCING

- § 35:21 Recipient Management of Its Sharing Obligations
- § 35:22 Agency Remedies for Noncompliance with Sharing Requirements

VI. OMB GUIDANCE ON COST SHARING OR MATCHING

- § 35:23 The Uniform Guidance on Voluntary Cost Sharing for Research Awards
- § 35:24 Criteria for Acceptable Contributions
- § 35:25 Program Income as Satisfying the Contribution
- § 35:26 Recipient Unrecovered Indirect Costs as Satisfying Its Sharing Obligation
- § 35:27 Valuing Donations or Contributions of Services and Property
- § 35:28 The Recipient’s/Subrecipient’s Contribution of Its Real Property
- § 35:29 Contributions of Services
- § 35:30 Donations of Property and Use of Space

VII. AUDITS OF SHARED RESOURCING OBLIGATIONS

- § 35:31 The Audit Requirement
- § 35:32 Compliance Audits for Satisfying Shared Resource Obligations
- § 35:33 Internal Control Audits of Recipient Resource Contribution

CHAPTER 36. GRANT COSTS

I. INTRODUCTION

- § 36:1 Welcome to Costs
- § 36:2 Cost Disputes
- § 36:3 OMB Guidance and Agency Regulation of Costs

II. BASIC COST CONCEPTS AND POLICIES

- § 36:4 Perspectives on Costs
- § 36:5 Costs
- § 36:6 Total Cost and Applicable Credits
- § 36:7 Profit
- § 36:8 Direct and Indirect Costs
- § 36:9 Basic Cost Policies

III. THE ALLOWABILITY OF COSTS IN FEDERAL GRANTS

- § 36:10 Allowable Costs
- § 36:11 Reasonable Costs
- § 36:12 Allocable Costs
- § 36:13 Unallowable Costs

IV. STATUTORY AND REGULATORY AUTHORITIES ON COSTS

- § 36:14 Legislation
- § 36:15 The Uniform Guidance
- § 36:16 The OMB Audit Compliance Supplement
- § 36:17 Cost Regulations for Publicly Owned Hospitals
- § 36:18 Cost Regulations for Federal Contracts with Non-Profits
- § 36:19 Cost Regulations for For-Profits with Grants or Cooperative Agreements
- § 36:20 Non-Federal Entities Exempt from the OMB Cost Principles
- § 36:21 Recipients Subject to Cost Accounting Standards
- § 36:22 Grant Administration Rules and Principles Affecting Allowability

V. RECIPIENT LABOR COSTS

- § 36:23 Documenting Work on the Grant
- § 36:24 OMB Circulars Rules on Documenting Employee Labor

TABLE OF CONTENTS

- § 36:25 Documenting Recipient Labor Costs Under the Uniform Guidance

VI. QUESTIONED COSTS, DISALLOWANCES, AND COLLECTIONS

- § 36:26 Prior Written Approval (Prior Approval)
- § 36:27 Questioned Costs
- § 36:28 Disallowed costs
- § 36:29 Collection of Unallowable or Disallowed Costs
- § 36:30 Certifications of Cost Submissions

VII. ALLOWABILITY OF SPECIFIED COSTS

- § 36:31 Cost Items in the Uniform Guidance
- § 36:32 The Comparative Allowability of Cost Items

VIII. AUDITS OF COSTS

- § 36:33 Audits
- § 36:34 Audits for Compliance with the Cost Principles
- § 36:35 Audits of Internal Control on Cost Compliance

CHAPTER 37. GRANT INDIRECT COSTS AND OVERHEAD RATES

I. INTRODUCTION

- § 37:1 Indirect Costs in Federal Grants
- § 37:2 Negative Attention to Indirect Rates
- § 37:3 OMB Guidance and Agency Regulation of Indirect Costs

II. KEY CONCEPTS REGARDING INDIRECT COSTS

- § 37:4 Indirect Costs
- § 37:5 Direct Costs
- § 37:6 Distinguishing Direct and Indirect Costs
- § 37:7 Indirect Costs and Administrative Costs
- § 37:8 Base
- § 37:9 Base Period
- § 37:10 Allowable Indirect Costs
- § 37:11 Allocable Costs
- § 37:12 Cost Allocation Plan
- § 37:13 Cost Objective

- § 37:14 Indirect Cost Pool
- § 37:15 Indirect Cost Rate Proposals
- § 37:16 Indirect Cost Rate

III. ESTABLISHING THE INDIRECT COST RATE

- § 37:17 The Indirect Cost Rate Process
- § 37:18 The Cognizant Agency for Indirect Cost Rates

IV. AN OVERVIEW OF THE APPENDICES FOR INDIRECT COST RATES

- § 37:19 Recipient and Agency—Specific Treatment of Indirect Costs
- § 37:20 Indirect Rates for Institutions of Higher Education—Appendix III
- § 37:21 Indirect Rates for Nonprofit Organizations—Appendix IV
- § 37:22 Cost Allocation Plans for States and Local Governments—Appendix V
- § 37:23 Public Assistance Cost Allocation Plans—Appendix VI
- § 37:24 Indirect Cost Proposals for State, Local Governments, and Indian Tribes—Appendix VII

V. GUIDANCE ON “GROUPING” (POOLING) COSTS

- § 37:25 Different Approaches for Different Types of Recipients
- § 37:26 Cost Pooling Guidance for Institutions of Higher Education—Appendix III
- § 37:27 Cost Pooling Guidance for Nonprofit Organizations—Appendix IV
- § 37:28 Cost Pooling Guidance for State/Local Government-Wide Cost Allocation Plans—Appendix V
- § 37:29 Cost Pooling Guidance for Public Assistance Cost Allocation Plans—Appendix VI
- § 37:30 Cost Pooling Guidance for State and Local Government and Indian Tribe Indirect Cost Proposals—Appendix VII

VI. TYPES OF INDIRECT COST RATE AGREEMENTS

- § 37:31 Selecting the Right Indirect Cost Rate Arrangement
- § 37:32 Predetermined Rates
- § 37:33 Negotiated Fixed Rate with Carry Forward
- § 37:34 Provisional/Final Rates
- § 37:35 Final Rates

TABLE OF CONTENTS

VII. OTHER RATE ARRANGEMENTS

- § 37:36 Special Rates
- § 37:37 Restricted Rates
- § 37:38 The De Minimis Rate
- § 37:39 Indirect Rates in Subawards

VIII. FINALIZING THE INDIRECT COST RATE

- § 37:40 Computing the Rate
- § 37:41 The Indirect Cost Rate Agreement
- § 37:42 Disputes Over the Establishment of Indirect Cost Rates
- § 37:43 Accepting the Established Rates
- § 37:44 Extending Indirect Cost Rates
- § 37:45 Certifications of Indirect Cost Submissions Under the Uniform Guidance
- § 37:46 Adjustments and Agency Corrections of Indirect Costs

IX. AUDITS OF INDIRECT COSTS

- § 37:47 Audits
- § 37:48 Compliance Audits of Indirect Costs
- § 37:49 Audits of Internal Control Regarding Indirect Costs

X. SAMPLE INDIRECT COST RATE PROPOSALS

- § 37:50 Sample Indirect Cost Rate Proposals

CHAPTER 38. GRANT FINANCIAL REPORTING

I. INTRODUCTION

- § 38:1 Spending and Tracking Grant Money
- § 38:2 OMB Guidance and Agency Regulation of Financial Reporting

II. FINANCIAL REPORTING

- § 38:3 The Role of Financial Reports
- § 38:4 Financial Report Content
- § 38:5 Financial Report Format
- § 38:6 Additional Financial Reports
- § 38:7 Cash or Accrual Reporting
- § 38:8 Frequency of Recipient Financial Reporting
- § 38:9 Schedules for the Submission of Financial Reports

- § 38:10 Waivers and Extensions of Financial Reports
- § 38:11 Financial Reporting by Subrecipients

III. AUDITS OF FINANCIAL REPORTING

- § 38:12 Audits

IV. FINANCIAL REPORTING FORMS

- § 38:13 SF 425, Federal Financial Report (OMB 4040-0014)

CHAPTER 39. GRANT PERFORMANCE REPORTING

I. INTRODUCTION

- § 39:1 All Important Reports
- § 39:2 OMB Guidance and Agency Regulation of Performance Reporting

II. PERFORMANCE REPORTS

- § 39:3 The Role of Performance Reports
- § 39:4 Subrecipient Performance Reports
- § 39:5 Performance Report Content
- § 39:6 Financial Management and Performance
- § 39:7 Frequency of Performance Reports
- § 39:8 Basic Performance Report Forms
- § 39:9 Research Grants
- § 39:10 Performance Reports on Construction Awards
- § 39:11 Reports of Significant Developments
- § 39:12 An Agency's Performance Report Instructions
- § 39:13 Government Oversight of Recipient Reports—
Sometimes Below Par

III. AUDITS OF RECIPIENT REPORTING

- § 39:14 Audits
- § 39:15 Compliance Audits of a Recipient's Reporting
- § 39:16 Internal Control Audits of Recipient Reporting

CHAPTER 40. GRANT PROPERTY MANAGEMENT

I. INTRODUCTION

- § 40:1 Property Purchased or Provided for the Grant Effort

TABLE OF CONTENTS

- § 40:2 OMB Guidance and Agency Regulation of Grant Property Management

II. THE RECIPIENT'S STEWARDSHIP OF GRANT PROPERTY

- § 40:3 The Recipient's Trust Relationship to Federally—Funded Property
- § 40:4 "Conditional Title" to Federally-Funded Property
- § 40:5 Insurance on Federally-Funded Property
- § 40:6 Insurance on Federally-Owned Property

III. TYPES OF GRANT PROPERTY

- § 40:7 Types of Property by Subject
- § 40:8 Types of Property by Source

IV. FEDERALLY OWNED PROPERTY

- § 40:9 Federal Property
- § 40:10 Title to Federally Owned Property
- § 40:11 Inventory of Federally Owned Property
- § 40:12 Disposition of Federally Owned Property
- § 40:13 Federal Exempt Property

V. FEDERALLY FUNDED REAL PROPERTY

- § 40:14 Federally-Funded Real Property
- § 40:15 Title to Federally Funded Real Property
- § 40:16 Recipient Use of Federally Funded Real Property
- § 40:17 Reports on Real Property
- § 40:18 Disposition of Federally Funded Real Property

VI. FEDERALLY FUNDED EQUIPMENT

- § 40:19 Equipment
- § 40:20 Title to Federally Funded Equipment
- § 40:21 Insurance on Federally Funded Equipment
- § 40:22 Authorized Uses of Federally Funded Equipment
- § 40:23 Recipient Records of Federally Funded Equipment
- § 40:24 Recipient Physical Inventory of Federally Funded Equipment
- § 40:25 Recipient Control Over Federally Funded Equipment
- § 40:26 Recipient Maintenance of Federally Funded Equipment
- § 40:27 Disposition of Federally Funded Equipment

VII. FEDERALLY FUNDED SUPPLIES

- § 40:28 Supplies

- § 40:29 Title to Supplies
- § 40:30 Use of Supplies
- § 40:31 Disposition of Supplies at the End of the Grant

VIII. INTANGIBLE PROPERTY

- § 40:32 Intangible Property
- § 40:33 Rights in Intangible Property

IX. AUDITS OF GRANT PROPERTY MANAGEMENT

- § 40:34 Audits
- § 40:35 Compliance Audits of a Recipient's Property Management
- § 40:36 Audits of Internal Control of Property Management

CHAPTER 41. CONTRACTING BY RECIPIENTS

I. INTRODUCTION

- § 41:1 Contracting Out Grant Dollars
- § 41:2 Regulatory Governance of Recipient Procurement
- § 41:3 Uniform Guidance on Contracting Based on OMB Circular A-102
- § 41:4 Changes to Agency Involvement in Recipient Procurement Under the Uniform Guidance

II. THE FEDERAL GOVERNMENT'S INVOLVEMENT IN RECIPIENT PROCUREMENT

- § 41:5 Federal Oversight of Recipient Procurement
- § 41:6 The Role of Government Accountability Office in Recipient Contracting

III. KEY RULES AND BEST PRACTICES FOR RECIPIENT PROCUREMENT

- § 41:7 Comply with the Federal Rules
- § 41:8 Federal Procurement as the Default Reference
- § 41:9 Only Do Business with "Responsible" Contractors
- § 41:10 Employ Smart Business Practices
- § 41:11 Always Consider the Consequences of Allowability

IV. CONTRACTS AND ASSISTANCE RELATIONSHIPS

- § 41:12 Contract Law and Recipient Contracting

TABLE OF CONTENTS

- § 41:13 Privity of Contract
- § 41:14 Flow Downs of Required Terms
- § 41:15 Contract or Subaward—Redux

V. CONTRACTING WITH PUBLIC FUNDS—AN OVERVIEW

- § 41:16 “Types” of Contracts
- § 41:17 Types of Contracts Based on Subject of the Purchase
- § 41:18 Types of Contracts Based on Competition
- § 41:19 Types of Contracts Based on Procurement Method
- § 41:20 Types of Contracts Based on Contractor Selection Criteria
- § 41:21 Type of Contract Based on the Parties’ Performance Obligations
- § 41:22 Types of Contracts Based on Payment Arrangement

VI. OMB GUIDANCE ON CONTRACTING BY STATE AND LOCAL GOVERNMENTS

- § 41:23 Contracting Rules for the States
- § 41:24 Contracting Rules for the Non-State Governments

VII. GENERAL PROCUREMENT POLICIES

- § 41:25 Recipients Are Responsible for Their Contracting
- § 41:26 Recipients Can Award Contracts Only to Responsible Contractors
- § 41:27 Recipients Are Responsible for Contractor Oversight
- § 41:28 Recipients Must Pay Their Contractors Promptly
- § 41:29 Recipients Must Create Procurement Records
- § 41:30 Mandatory Contract Features in Recipient and Subrecipient Contracts
- § 41:31 Mandatory Compliance Requirements
- § 41:32 OMB Circular Only Features of Recipient Procurement

VIII. RECIPIENT PROCUREMENT STANDARDS

- § 41:33 Written Standards of Conduct for Recipient Procurement Personnel
- § 41:34 No Personal Conflicts of Interest
- § 41:35 No Organizational Conflicts of Interest
- § 41:36 Prohibition Against Gratuities
- § 41:37 Required Discipline for Violators

IX. PROCUREMENT BUSINESS PRACTICES FOR RECIPIENTS

- § 41:38 Only Necessary Purchases
- § 41:39 Economies of Scale—Or “Strategic Sourcing”
- § 41:40 Lease Versus Purchase Analysis
- § 41:41 Use of Agreements
- § 41:42 Use of Excess or Surplus Federal Property
- § 41:43 Value Engineering

X. MARKET RESEARCH AND ACQUISITION PLANNING

- § 41:44 Acquisition Planning
- § 41:45 Market Research
- § 41:46 Government Market Research Under the Federal Acquisition Regulation
- § 41:47 Market Research and Acquisition Planning Considerations

XI. COMPETITION IN RECIPIENT CONTRACTING

- § 41:48 Full and Open Competition
- § 41:49 Describing Requirements
- § 41:50 Contractor Selection Criteria
- § 41:51 Prequalified Vendors
- § 41:52 Preferences for Certain Vendors
- § 41:53 Indicia of Unduly Restrictive Competition
- § 41:54 Excluded from a Specific Contract

XII. PROCUREMENT METHODS FOR RECIPIENT CONTRACTING

- § 41:55 Authorized Procurement Methods
- § 41:56 Contract Thresholds and Acquisition Costs
- § 41:57 Procurement by Micro Purchase
- § 41:58 Procurement by Simplified Acquisition Procedures
- § 41:59 Sealed Bidding (Formal Advertising)
- § 41:60 Competitive Proposals
- § 41:61 Use of Competitive Procedures for Architect and Engineering Contracts
- § 41:62 Noncompetitive Proposals
- § 41:63 Restrictions on Time and Material Contracts

XIII. CONTRACT PRICING CONSIDERATIONS

- § 41:64 Independent Estimates

TABLE OF CONTENTS

- § 41:65 Contract Cost and Price Analysis
- § 41:66 Recipient Negotiation of Profit
- § 41:67 Cost-Plus-Percentage-of-Cost Contracts Prohibited
- § 41:68 Contractor Bonding Requirements

XIV. AWARDING AGENCY REVIEW OF RECIPIENT PROCUREMENT

- § 41:69 The Option for Additional Agency Oversight
- § 41:70 Agency Review of Specifications
- § 41:71 Agency Review of Other Recipient Procurement Documents
- § 41:72 Exemption From Agency Review

XV. AUDITS OF RECIPIENT CONTRACTING

- § 41:73 Audits
- § 41:74 Compliance Audits of a Recipient's Contracting
- § 41:75 Audits of Internal Control on Contracting

CHAPTER 42. CHANGES AND PRIOR APPROVALS IN GRANTS

I. INTRODUCTION

- § 42:1 Key Grant Administration Issues
- § 42:2 OMB Guidance and Agency Regulation of Changes and Prior Approvals

II. CHANGES IN GRANT AWARDS

- § 42:3 Changes in Plans
- § 42:4 Issues for the Agency in Grant Changes
- § 42:5 "Scope" Considerations in Grant Changes
- § 42:6 Fiscal Considerations and Scenarios in Grant Changes

III. PRIOR APPROVALS

- § 42:7 Another Control Device: Agency Prior Approvals
- § 42:8 The OMB's Approach to Prior Approvals
- § 42:9 Prior Approval Topics Not Included in the Uniform Guidance
- § 42:10 Basic Rule on Changes: Some Need Prior Approval, and Some Don't
- § 42:11 Starting Point: The Approved Budget
- § 42:12 Changes to Grants
- § 42:13 Authorized Waivers of Prior Approvals in Federal Awards

- § 42:14 Obtaining Prior Approvals

IV. PRIOR APPROVALS FOR CERTAIN COSTS

- § 42:15 Prior Approval for Incurring Certain Costs
§ 42:16 Suggested Prior Approvals Regarding Allowability
§ 42:17 The Organizational Prior Approval Approach
§ 42:18 Agency Retroactive Approvals

V. RECIPIENTS' LESSONS LEARNED ON PRIOR APPROVALS

- § 42:19 Prior Approvals for Incurring Preaward Costs: *River East*
§ 42:20 Proving the Prior Approval: *Brown Magnolia*
§ 42:21 The Agency Cannot Approve What Cannot Be Approved, The Lesson of *Traylor Products*

CHAPTER 43. GRANT RECORDS MANAGEMENT

I. INTRODUCTION

- § 43:1 Grants Records Management
§ 43:2 OMB Guidance and Agency Regulations on Records Management

II. GRANT RECORDS

- § 43:3 The Basic Records
§ 43:4 The Records to be Maintained

III. RECORDS RETENTION

- § 43:5 A Key Issue in Records Management
§ 43:6 The Default Records Retention Period
§ 43:7 Commencement of the Records Retention Period
§ 43:8 Commencement of the Records Retention Period for Real Property and Equipment
§ 43:9 Records Retention of Indirect Cost Rate—Related Records
§ 43:10 Exceptions to the Basic Period of Records Retention
§ 43:11 Long-Term Retention Records
§ 43:12 Records Media

IV. ACCESS TO THE RECIPIENT'S RECORDS

- § 43:13 The Government's Right of Access

TABLE OF CONTENTS

- § 43:14 Access to Recipient Personnel
- § 43:15 Duration of the Right of Access
- § 43:16 Noncompliance with the Right of Access
- § 43:17 Public Access to Recipient Records
- § 43:18 Records of Crime Victims
- § 43:19 Other Records with Protected Information

V. PRACTICAL ADVICE ON RECORDS MANAGEMENT

- § 43:20 Adequate Records
- § 43:21 Contemporaneous Records

CHAPTER 44. GRANT PERIODS OF PERFORMANCE, BUDGET PERIODS, EXTENSIONS, AND NO-FAULT TERMINATIONS

I. INTRODUCTION

- § 44:1 The Life of a Grant
- § 44:2 OMB Guidance and Agency Regulation of Periods of Performance, Budget Periods, Extensions, and No Fault Terminations

II. PERIODS OF PERFORMANCE AND BUDGET PERIODS

- § 44:3 A Basic Control
- § 44:4 Budget Period Constraint
- § 44:5 Timing of the Obligation
- § 44:6 The Allocability of the Obligation

III. EXTENSIONS OF GRANT AWARDS

- § 44:7 Beyond the Period of Performance
- § 44:8 Recipient-Initiated Extensions
- § 44:9 Conditions of Recipient-Initiated Extensions
- § 44:10 No Cost Extensions
- § 44:11 Procurement-Type Concerns on Extensions

IV. THE TERMINATION OF GRANTS

- § 44:12 Grant Termination
- § 44:13 Recipient—Initiated Termination of an Award
- § 44:14 The Awarding Agency's Initiation of a Mutual Termination

- § 44:15 The Awarding Agency's Wholly Unilateral Termination of an Award
- § 44:16 Litigation Regarding Terminations
- § 44:17 Agency-Initiated Termination "For Cause" Under the Uniform Guidance
- § 44:18 Termination Responsibilities

CHAPTER 45. GRANT CLOSEOUT

I. INTRODUCTION

- § 45:1 Closing the Award
- § 45:2 OMB Guidance and Agency Regulations on Closeout

II. CLOSEOUT

- § 45:3 The OMB's Definition of Closeout
- § 45:4 Closeout is an Important Compliance Requirement
- § 45:5 The Key Features of Closeout
- § 45:6 When Closeout is Complete
- § 45:7 Schedule for Closeout Activities
- § 45:8 Closeout Schedule Extensions
- § 45:9 Closeout Reports
- § 45:10 Recipient Liquidation of Obligations
- § 45:11 Government Payment of Authorized Reimbursements
- § 45:12 Settlements of Advance Payments
- § 45:13 Adjustments Regarding Shared Support
- § 45:14 Property Reporting at Closeout
- § 45:15 Conclusion of Closeout

III. POST-CLOSEOUT

- § 45:16 Continuation or Modification of the Relationship
- § 45:17 The Government's Post-Closeout Financial Rights
- § 45:18 The Parties' Post-Closeout Rights and Obligations

IV. CLOSER ATTENTION TO CLOSEOUT—THE GONE ACT

- § 45:19 Closeout—Once the Backwater of Grant Administration
- § 45:20 The GONE Act

CHAPTER 46. GRANT AUDITS

I. INTRODUCTION

- § 46:1 Grant "Audits"

TABLE OF CONTENTS

- § 46:2 Grantee-Initiated Audits
- § 46:3 Government-Initiated Audits

II. SINGLE AUDIT ACT AUDITS

- § 46:4 The Basic Audit of Federal Grant Practice
- § 46:5 Regulatory Governance of Grant Audits
- § 46:6 The Basic Audit Requirement
- § 46:7 Players in the Audit Process

III. THE SINGLE AUDIT ACT

- § 46:8 The Background of Assistance Audits
- § 46:9 Recent Concerns and Initiatives to Improve Audits
- § 46:10 The Uniform Guidance on Audits

IV. THE ROLE OF FEDERAL AGENCIES IN THE AUDIT PROCESS

- § 46:11 Increased Involvement by Federal Agencies
- § 46:12 Cognizant Agency for Audit
- § 46:13 Oversight Agency for Audit
- § 46:14 The Federal Awarding Agencies
- § 46:15 Pass-Through Recipients

V. PRELIMINARY AUDIT CONSIDERATIONS

- § 46:16 Recipient Initiation of the Single Audit
- § 46:17 Exemption from a Single Audit
- § 46:18 Calculating Federal Awards Expended
- § 46:19 Single Audit Act Audits in Relation to Other Audits
- § 46:20 Frequency of Audits
- § 46:21 Sanctions for Noncompliance with Audit Requirements
- § 46:22 Audit Costs

VI. AUDITEE RESPONSIBILITIES IN THE AUDIT

- § 46:23 Overview of Auditee Responsibilities
- § 46:24 Engaging the Auditor
- § 46:25 Recipient-Prepared Pre-Audit Materials

VII. COMMENCEMENT OF THE AUDIT

- § 46:26 Overview of Auditing
- § 46:27 Auditing Standards
- § 46:28 Major Program Determination

- § 46:29 Criteria for Assigning Federal Program Risk
- § 46:30 Criteria for a Low-Risk Auditee

VIII. CONDUCT OF THE AUDIT

- § 46:31 What is Audited
- § 46:32 Audits Under the Compliance Supplement
- § 46:33 Tests for Internal Control
- § 46:34 The Audit Report

IX. AUDIT FINDINGS

- § 46:35 Audit Findings
- § 46:36 Audit Finding Detail and Clarity

X. PROGRAM-SPECIFIC AUDITS

- § 46:37 An Optional Audit Method
- § 46:38 Conduct of the Program-Specific Audit
- § 46:39 The Program-Specific Audit Report

XI. RESPONSES TO THE AUDIT

- § 46:40 Auditee Responsibilities
- § 46:41 The Auditee's Corrective Action Plan

XII. AUDIT SUBMISSIONS

- § 46:42 The Audit Submission and Reporting Package
- § 46:43 Audit Report Submission

XIII. ACTIONS ABOVE THE AUDITEE LEVEL

- § 46:44 The Management Decision
- § 46:45 Cooperative Audit Resolution

XIV. AUDIT RECORDS MANAGEMENT

- § 46:46 Auditee Records
- § 46:47 Auditor Records
- § 46:48 The Federal Audit Clearinghouse

TABLE OF CONTENTS

**PART 7. NONCOMPLIANCE,
REMEDIES, AND DISPUTES**

**CHAPTER 47. AGENCY REMEDIES FOR
RECIPIENT NONCOMPLIANCE**

I. INTRODUCTION

- § 47:1 Administrative Remedies for Noncompliance
- § 47:2 Remedies by Recipients on Subrecipients
- § 47:3 OMB Guidance and Agency Regulations on Remedies
for Noncompliance

**II. REMEDIAL ACTION SHORT OF A REMEDY—
“SPECIFIC CONDITIONS”**

- § 47:4 Attempts at Correction Prior to a Remedy
- § 47:5 The Imposition of Specific Conditions During
Performance
- § 47:6 Specific Conditions
- § 47:7 Procedures for Imposing Specific Conditions
- § 47:8 Withdrawal of Specific Conditions

III. ENFORCING REMEDIES

- § 47:9 Bases for Remedies
- § 47:10 Unintentional Omission of a Remedy Qualifier?
- § 47:11 Due Process in Effecting Remedies
- § 47:12 Remedies and Estoppel
- § 47:13 The Effect of Remedies on a Recipient’s Incurred
Costs

**IV. REMEDIES FOR NONCOMPLIANCE SHORT OF
TERMINATION**

- § 47:14 The Remedy of Withholding Payment
- § 47:15 The Remedy of Cost Disallowance
- § 47:16 The Remedy of Suspending Award Performance
- § 47:17 The Remedy of Withholding Future Awards
- § 47:18 Other Remedies Short of Termination
- § 47:19 Initiate Suspension or Debarment
- § 47:20 Termination “For Cause”

V. TERMINATION FOR NONCOMPLIANCE

- § 47:21 Termination for Noncompliance

- § 47:22 Considerations Prior to Termination for Noncompliance
- § 47:23 The Process of Termination for Noncompliance
- § 47:24 Post-Termination Obligations

CHAPTER 48. DISPUTES AT THE AWARDING AGENCY LEVEL

I. INTRODUCTION

- § 48:1 Dispute Resolution
- § 48:2 Judicial Challenges and the “Exhaustion” of Administrative Dispute Procedures
- § 48:3 No Contract Disputes Act Relief for Assistance Recipients

II. AGENCY-LEVEL DISPUTE PROCESSES IN ASSISTANCE

- § 48:4 Regulations Regarding Disputes
- § 48:5 Program-Specific Dispute Procedures
- § 48:6 The OMB’s Uniform Guidance Regarding Disputes
- § 48:7 Agency-specific dispute procedures
- § 48:8 The Typical Agency Dispute Process

III. SAMPLE AGENCY DISPUTES CLAUSES

- § 48:9 A Short Dispute Resolution Clause
- § 48:10 A Longer Dispute Resolution Clause
- § 48:11 Another Agency Dispute Clause

IV. OVERVIEW OF DISPUTE RESOLUTION TECHNIQUES

- § 48:12 Flexible Options for Dispute Resolution in Federal Assistance
- § 48:13 Alternative Dispute Resolution (ADR)
- § 48:14 Observations and Advice on Disputes and Negotiation
- § 48:15 Observations and Advice on Negotiating

CHAPTER 49. GRANT DISPUTES IN FEDERAL COURT

I. INTRODUCTION

- § 49:1 Disputing Beyond the Awarding Agency Level

TABLE OF CONTENTS

- § 49:2 Considerations for the Recipient in Suing the Federal Government
- § 49:3 Program-specific requirements and relief

II. JURISDICTIONAL AND TECHNICAL CONSIDERATIONS

- § 49:4 The Government's Defense of "Sovereign Immunity"
- § 49:5 "Standing" to Sue the Government
- § 49:6 Ripeness and Mootness
- § 49:7 The "Exhaustion of Remedies"

III. THE "CAUSE OF ACTION" AND THE "RELIEF SOUGHT"

- § 49:8 Causes of Action
- § 49:9 The Relief Sought in the Lawsuit
- § 49:10 The Value of Setting Aside Adverse Agency Action

IV. THE TUCKER ACT AND THE ADMINISTRATIVE PROCEDURE ACT

- § 49:11 The Tucker Act
- § 49:12 The Administrative Procedure Act

CHAPTER 50. LESSONS LEARNED FROM RECIPIENT SHORTFALLS IN GRANT MANAGEMENT

I. INTRODUCTION

- § 50:1 A Catalogue of Grant Mismanagement
- § 50:2 Success is a Poor Teacher
- § 50:3 What to Take Away from This Chapter

II. FAILURES IN BASIC GRANT MANAGEMENT

- § 50:4 Recipients Should Be Honest in Word and Deed
- § 50:5 Recipients Should Be Scrupulous in Financial Management
- § 50:6 Recipients Should Strive for Gold Stars in Records Management
- § 50:7 Recipients Are Always Responsible for their Subrecipients
- § 50:8 Recipients Should Pay Close Attention When Contracting with Grant Funds

III. EFFECTING REMEDIES—REDUX

- § 50:9 Bad Stewardship Attracts Negative Attention
- § 50:10 Remedies are Not the Government's First Choice
- § 50:11 Termination for Noncompliance—The Grant Death Sentence
- § 50:12 The Recipient's Burden in Responding to a Remedy

IV. EXCUSES, DEFENSES, AND MATTERS IN EXTENUATION

- § 50:13 Good Faith and Good Intentions Are Not Good Enough
- § 50:14 "We Didn't Know the Rules" is No Defense
- § 50:15 "We Deserve a Chance to Make Corrections"
- § 50:16 We Fixed It!
- § 50:17 This is Our First Offense
- § 50:18 We're Gonna Do Better!
- § 50:19 "The Remedy Works a Financial Hardship on the Recipient"
- § 50:20 "The Remedy Adversely Affects Our Ability to Carry on Our Good Works"
- § 50:21 Estoppel Almost Never Works
- § 50:22 Equity Doesn't Help
- § 50:23 Stick to Your Story

V. CASE STUDIES

- § 50:24 Tri-County Medical Center
- § 50:25 East Chicago Community Health Center
- § 50:26 AmASSI Health & Cultural Center
- § 50:27 Galveston County Community Action Council

PART 8. OTHER KEY SUBJECTS AFFECTING GRANT PRACTICE

CHAPTER 51. INTELLECTUAL PROPERTY ISSUES IN FEDERAL ASSISTANCE

I. INTRODUCTION

- § 51:1 The Issue and the Basic Rule
- § 51:2 Intellectual Property
- § 51:3 The Parties' Basic Rights in Federally Funded Discoveries

TABLE OF CONTENTS

- § 51:4 Governing Authorities on Rights in Intellectual Property

II. A PRIMER ON INTELLECTUAL PROPERTY

- § 51:5 Types of Intellectual Property in Federal Assistance
- § 51:6 Patents
- § 51:7 Subjects of Patents
- § 51:8 Conditions of Patentability
- § 51:9 Conditions Defeating Patentability
- § 51:10 Types of Patents
- § 51:11 Patent Applications
- § 51:12 Copyright
- § 51:13 Subjects of Copyright
- § 51:14 Criteria for Copyright
- § 51:15 Copyright Term
- § 51:16 Copyright Registration and Notice of Copyright
- § 51:17 Copyright in Government Works
- § 51:18 Copyright Rights Under Assistance Agreements
- § 51:19 Trade Secrets

III. AUTHORITIES FOR RIGHTS IN PATENTABLE INVENTIONS RESULTING FROM FEDERALLY FUNDED AWARDS

- § 51:20 The Basic Legal Foundation: The Bayh-Dole Act
- § 51:21 Background of the Bayh-Dole Act
- § 51:22 The Bayh-Dole Act
- § 51:23 Relationship of the Bayh-Dole Act to the Stevenson-Wydler and Technology Transfer Acts

IV. RIGHTS IN INTELLECTUAL PROPERTY FROM FEDERALLY FUNDED RESEARCH

- § 51:24 The Parties' Basic Rights
- § 51:25 Exception to the General Rule: No Recipient Rights
- § 51:26 Recipients' Obligations and Rights in Inventions
- § 51:27 Unpatented Inventions (Trade Secrets)
- § 51:28 The Government's Rights in Intellectual Property Developed by Recipients with Federal Funding
- § 51:29 The Government's Right to Ownership of the Invention
- § 51:30 The Government's March-In Rights
- § 51:31 Recipient Relinquishment of Ownership in Favor of the Inventor
- § 51:32 Co-invention with Government Personnel

- § 51:33 Employee-Inventors
- § 51:34 Consolidated Title
- § 51:35 Third-Party Use of the Government's Rights in
Inventions

V. PATENT COST ISSUES IN FEDERAL ASSISTANCE

- § 51:36 Patent Costs
- § 51:37 Royalty Payments and Program Income

VI. RECIPIENT OBLIGATIONS FOR EXPORT CONTROL OF INTELLECTUAL PROPERTY

- § 51:38 Export Controls on Intellectual Property in Federal
Grant Practice
- § 51:39 Export Controls Affecting Federal Grant Practice
- § 51:40 The Fundamental Research Exemption

VII. THE STANDARD INTELLECTUAL PROPERTY CLAUSE

- § 51:41 The Standard Clause
- § 51:42 Draft March-In Rights Guidance.

CHAPTER 52. INFORMATION RELEASE ISSUES IN ASSISTANCE

I. INTRODUCTION

- § 52:1 The Information Release Concern

II. THE FREEDOM OF INFORMATION ACT

- § 52:2 The Freedom of Information Act
- § 52:3 The Freedom of Information Improvement Act of 2016
- § 52:4 Government Withholding Records Requested Under
the Freedom of Information Act
- § 52:5 Withholding Records in Practice

III. THE FOIA'S EXEMPTIONS FROM THE RELEASE OF RECORDS

- § 52:6 The FOIA "Exemptions"
- § 52:7 FOIA Exemption 1: National Defense and Foreign
Policy
- § 52:8 FOIA Exemption 2: Internal Government Personnel
Rules and Practices

TABLE OF CONTENTS

- § 52:9 FOIA Exemption 3: Records Exempt from Release by Other Statutes
- § 52:10 FOIA Exemption 4: Trade Secrets and Confidential Commercial or Financial Information
- § 52:11 FOIA Exemption 5: Internal Memoranda
- § 52:12 FOIA Exemption 6: Clearly Unwarranted Invasion of Personal Privacy
- § 52:13 Other FOIA exemptions
- § 52:14 The FOIA Exemptions and Segregable Release

IV. PREDISCLOSURE NOTIFICATION, APPEALS, AND LITIGATION

- § 52:15 Predisclosure Notice to the Submitter of the Record
- § 52:16 Appeals by the Requester of Agency Nonrelease Decisions
- § 52:17 FOIA Litigation

V. THE “SHELBY AMENDMENTS”

- § 52:18 Background
- § 52:19 The “Shelby Amendment” in Essence
- § 52:20 OMB Guidance on the Shelby Amendment
- § 52:21 Program-Specific FOIA Issues
- § 52:22 Transparency Initiatives Affecting Information Release

VI. FINAL RECIPIENT INFORMATION RELEASE CONCERNS

- § 52:23 Government-Generated Records About a Recipient
- § 52:24 Release of Recipient Award and Compensation Data
- § 52:25 State Freedom of Information Laws

CHAPTER 53. DOMESTIC PREFERENCES AND OTHER SUPPLY CHAIN ISSUES

I. INTRODUCTION

- § 53:1 Government involvement in supply chains
- § 53:2 Recent emphasis on supply chain vulnerabilities

II. DOMESTIC PREFERENCES

- § 53:3 Contrasting Country-of-Origin Requirements in Federal Contracting and Federal Assistance Pre-BABA Act

- § 53:4 Recent developments in domestic preference rules
- § 53:5 Infrastructure Investment and Jobs Act (IIJA)
Domestic Preference Requirements for Infrastructure
Projects Funded by Assistance Agreements
- § 53:6 OMB Final Guidance to Implement the BABA Act in
the Uniform Guidance
- § 53:7 BABA Act Expansion of Domestic Sourcing
Requirements Applicable to Assistance Agreements
- § 53:8 BABA Preferences Compliance and Enforcement

III. OTHER SUPPLY CHAIN RESTRICTIONS

- § 53:9 Prohibition on use of federal funds to purchase
telecommunications equipment and services from
certain Chinese companies
- § 53:10 Prohibition on contracting with the enemy

PART 9. GRANT INTEGRITY TOPICS

CHAPTER 54. GRANT MISCONDUCT AND FRAUD

I. INTRODUCTION

- § 54:1 Human Nature is Imperfect
- § 54:2 Sources of Information on Fraud
- § 54:3 Noncompliance Itself is Not Fraud
- § 54:4 We Told You So—And Now It's Here: Recipient
Disclosure of Its Misconduct

II. GOVERNMENT MISCONDUCT

- § 54:5 Rare But Real
- § 54:6 Indicators of Government Involvement in Grant Fraud

III. RECIPIENT AND CONTRACTOR MISCONDUCT AND FRAUD

- § 54:7 Some Classic Research Grant Fraud Schemes
- § 54:8 Recipient Fraud and Falsity
- § 54:9 Indicators of Recipient and Contractor Fraud
- § 54:10 Some Common Fraud Schemes
- § 54:11 Some Simple Audit Techniques
- § 54:12 The Financial Audit Manual
- § 54:13 Scientific Misconduct
- § 54:14 Federal Initiatives Regarding Fraud and Improper
Payments

TABLE OF CONTENTS

- § 54:15 Why is There Grant Fraud? A Theory From Reader's Digest

CHAPTER 55. GOVERNMENT LEGAL RESPONSES TO GRANT FRAUD

I. INTRODUCTION

- § 55:1 The Government's Legal Remedies for Assistance Misconduct

II. KEY PLAYERS IN RESPONDING TO ASSISTANCE MISCONDUCT

- § 55:2 Agency Inspectors General
§ 55:3 The Department of Justice
§ 55:4 Law Enforcement and Criminal Investigative Agencies
§ 55:5 Awarding Agency Personnel
§ 55:6 "Whistleblowers"
§ 55:7 Qui Tam Relators

III. CIVIL FRAUD REMEDIES

- § 55:8 The Government's Civil Remedies
§ 55:9 The Civil False Claims Act
§ 55:10 The Background of the Civil False Claims Act: Early Amendments
§ 55:11 The Fraud Enforcement and Recovery Act of 2009
§ 55:12 The Background of the 2009 Amendments to the Civil False Claims Act
§ 55:13 The Fraud Enforcement and Recovery Act of 2009's Changes to the Civil False Claims Act
§ 55:14 The 2010 Amendments to the False Claims Act

IV. THE PROVISIONS OF THE CIVIL FALSE CLAIMS ACT

- § 55:15 The Fraud-Related Laws of the Civil False Claims Act
§ 55:16 Knowingly Presenting False Claims
§ 55:17 Civil False Statements
§ 55:18 Civil False Claims Act Conspiracy
§ 55:19 "Reverse False Claims"
§ 55:20 Noncompliance v. False Claims: *Escobar*

V. CIVIL FALSE CLAIMS ACT LITIGATION INITIATED BY QUI TAM RELATORS

- § 55:21 "Qui Tam"

- § 55:22 The Qui Tam Provisions of the Civil False Claims Act
- § 55:23 The “Relators” of Qui Tam Lawsuits
- § 55:24 Retaliation Protection for Qui Tam Whistleblowers
and Others Who Disclose Fraud
- § 55:25 Limitations on Qui Tam Suits
- § 55:26 Qui Tam Procedures
- § 55:27 The Qui Tam Relator’s Share of Recoveries Under the
Civil False Claims Act

VI. THE GOVERNMENT’S CRIMINAL FRAUD REMEDIES

- § 55:28 Criminal Responses to Fraud
- § 55:29 The Criminal False Statements Act
- § 55:30 Criminal False Claims
- § 55:31 Conspiracy to Make False Claims
- § 55:32 Obstruction of a Federal Audit
- § 55:33 Theft or Bribery Concerning Programs Receiving
Federal Funds
- § 55:34 Major Fraud Against the United States
- § 55:35 Anticorruption Statutes

VII. CONSIDERATIONS IN THE GOVERNMENT’S PURSUIT OF FRAUD CASES

- § 55:36 Voluntary Disclosure
- § 55:37 Factors in the Government’s Decision to Prosecute
- § 55:38 Deferred Prosecution Agreements
- § 55:39 Settlement of Civil False Claims Act Cases

VIII. KEY PROVISIONS OF THE CIVIL FALSE CLAIMS ACT

- § 55:40 The Basic Civil False Claims Act
- § 55:41 The Qui Tam Provisions of the Civil False Claims Act

XI. INDICATORS OF GRANT FRAUD

- § 55:42 Indicators of Fraud
- § 55:43 The NSF OIG Handbook

CHAPTER 56. EXCLUSION (SUSPENSION AND DEBARMENT)

I. INTRODUCTION

- § 56:1 Exclusion

TABLE OF CONTENTS

- § 56:2 Exclusion and the Emphasis on Transparency and Integrity
- § 56:3 OMB Guidance on Exclusion in Federal Assistance

II. THE BACKGROUND OF ASSISTANCE EXCLUSION

- § 56:4 Exclusion is an Executive Branch Function

III. EXCLUSION BASICS

- § 56:5 The Government's Policy on Exclusion
- § 56:6 Responsibility
- § 56:7 Bases for Debarment or Suspension
- § 56:8 Covered Transactions
- § 56:9 Noncovered Transactions
- § 56:10 The Effect of Exclusion on New and Current Awards and Contracts
- § 56:11 Relationship of Exclusion to Designation as a "High-Risk" Recipient
- § 56:12 Relationship of Assistance Exclusion to Federal Procurement Activities
- § 56:13 Interagency Coordination in Effecting Suspension and Debarment
- § 56:14 Current or Former Status as a Recipient or Contractor is not Required for Exclusion
- § 56:15 Awards by Exception to an Excluded Party
- § 56:16 Imputing Exclusion-Relevant Conduct
- § 56:17 Affiliates
- § 56:18 Principals
- § 56:19 Settlement of Exclusion Actions
- § 56:20 Disqualification

IV. SUSPENSION

- § 56:21 The Nature of Suspension
- § 56:22 Suspension Due Process: After-The-Fact
- § 56:23 Bases for Suspension
- § 56:24 Suspension Factors
- § 56:25 Effective Date of Suspension
- § 56:26 Notice of the Suspension Decision
- § 56:27 Contesting a Suspension
- § 56:28 The Respondent's Opposition to the Suspension
- § 56:29 Respondent's Additional Opportunity to Challenge the Suspension
- § 56:30 Additional Proceedings to Challenge a Suspension

- § 56:31 The Record of Suspension Proceedings
- § 56:32 The Suspending Official's Decision
- § 56:33 The Length of Suspension
- § 56:34 Office of Management and Budget Guidance on Suspension

V. DEBARMENT

- § 56:35 Debarment
- § 56:36 Bases for Debarment
- § 56:37 Debarment Procedures
- § 56:38 The Content of a Proposed Debarment
- § 56:39 Contesting a Proposed Debarment
- § 56:40 The Respondent's Submission in Opposition to a Proposed Debarment
- § 56:41 An "Additional Opportunity" to Challenge the Debarment
- § 56:42 The Fact-Finding Proceedings of the Additional Opportunity
- § 56:43 Fact-Finding in the Debarment Decision-Making Process
- § 56:44 The Time for a Debarment Decision
- § 56:45 The Standards and Burdens of Proof for Debarment
- § 56:46 Debarment Factors
- § 56:47 The Respondent's Advocacy
- § 56:48 The Debarring Official's Decision
- § 56:49 The Scope of Debarment or Suspension
- § 56:50 Reconsideration of the Debarment Decision
- § 56:51 The Period of Debarment
- § 56:52 A Comparison of Debarment and Suspension

VI. EXCLUSION COMPLIANCE OBLIGATIONS

- § 56:53 Exclusion Compliance Obligations of Recipients and Other Participants

VII. DUTIES OF THE AWARDING AGENCY REGARDING EXCLUSION

- § 56:54 The Basic Requirements
- § 56:55 The Effect of Exclusion After Award
- § 56:56 The Agency's Due Diligence
- § 56:57 Ensuring Recipient and Participant Compliance
- § 56:58 Agency Remedies for Covered Transactions with Excluded Parties

TABLE OF CONTENTS

**VIII. RECIPIENT AND PARTICIPANT
DISCLOSURE OBLIGATIONS REGARDING
EXCLUSION STATUS**

- § 56:59 Disclosure Obligations of Recipients
- § 56:60 Disclosure Obligations of Lower-Tier Participants
- § 56:61 Agency Remedies for Nondisclosure

IX. DATABASES ON EXCLUDED PARTIES

- § 56:62 The Excluded Parties List System and SAM.gov
- § 56:63 Exclusion Information in the Database

**X. A SAMPLE CERTIFICATION REGARDING
EXCLUSION**

- § 56:64 Sample Certification Regarding Exclusion

**XI. THE FEDERAL GOVERNMENT'S EXERCISE OF
EXCLUSION AUTHORITY**

- § 56:65 Government-wide and Interagency Oversight of
Exclusion
- § 56:66 The Federal Government's Exercise of Exclusion
Authority

XII. EXCLUSION CASE STUDY

- § 56:67 WEDJ/Three C's

APPENDIX

- Appendix A. Glossary of Terms Used in Federal Assistance
and Grant Practice

Table of Laws and Rules

Table of Cases

Index