

2025 Land & Water Conservation Fund Project Administration Guide



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MISSOURI DEPARTMENT OF NATURAL RESOURCES
DIVISION OF STATE PARKS

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LIST OF ACRONYMS

ABA	Architectural Barriers Act
ADA	Americans with Disabilities Act
ATV	All-Terrain Vehicle
BABA	Build America, Buy America Act
CAA	Clean Air Act
CFR	Code of Federal Regulations
CWA	Clean Water Act
DOJ	U.S. Department of Justice
DSP	Division of State Parks
EPA	Environmental Protection Agency
FEMA	Federal Emergency Management Agency
FFATA	Federal Funding Accountability and Transparency Act
FHWA	Federal Highway Administration
GMS	Grants Management Section
LWCF	Land and Water Conservation Fund
MBE	Minority Business Enterprise
MoDNR	MISSOURI Department of Natural Resources
NFIP	National Flood Insurance Program
NHPA	National Historic Preservation Act
NPDES	National Pollutant Discharge Elimination System
NPS	National Park Service
NTP	Notice to Proceed
NWP	Nationwide Permit
OPDMD	Other Power-Driven Mobility Devices
SCORP	Statewide Comprehensive Outdoor Recreation Program
SHPO	State Historic Preservation Office
SWPPP	Storm Water Pollution Prevention Plan
UASFLA	Uniform Appraisal Standards of Federal Land Acquisitions
Uniform Act	Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended
USACE	U.S. Army Corps of Engineers
WBE	Women Business Enterprise

SECTION I. GENERAL OVERVIEW OF GRANT ADMINISTRATION AND PROJECT COMPLIANCE

Congratulations on having your proposed project recommended for funding through the 2025 Land & Water Conservation Fund (LWCF). Created by Congress in 1965, LWCF provides matching grants to states and local governments for the acquisition and development of public outdoor recreation areas and facilities. The program is intended to create and maintain a nationwide legacy of high-quality recreation areas and facilities and to stimulate non-federal investments in the protection and maintenance of recreation resources across the United States. The LWCF program is funded through revenue from offshore oil and gas drilling. The U.S. Department of Interior's National Park Service (NPS) oversees the LWCF program and has delegated administration of the program to each state. In Missouri, the Department of Natural Resources (MoDNR) administers the program. Direct oversight of the program is performed by the Division of State Park's (DSP) Grants Management Section (GMS). Projects that are recommended for funding by GMS are those that demonstrate an ability to meet the needs outlined in the 2018-2022 Statewide Comprehensive Outdoor Recreation Plan (SCORP) which is available at https://mostateparks.com/sites/mostateparks/files/2018-2022%20Show%20Me%20the%20Great%20Outdoors_SCORP_Final.pdf. The SCORP serves as a framework for the planning, development, management and protection of Missouri's outdoor recreation resources.

Grant Administration Overview

The following provides a general overview of the process for administering your grant. Subsequent chapters of this guide detail the process more thoroughly. Sponsors have **two years** from the date the Financial Assistance Agreement (which consists of the Financial Assistance Agreement and all documents incorporated by reference) is signed to complete their LWCF project. Additionally, physical work (such as ground clearing or the beginning of construction) **must commence within one year** from the start date indicated on the Financial Assistance Agreement (FAA). It's important that you, the project sponsor, demonstrate every effort to complete your project within the agreed-upon timeframe indicated on the Financial Assistance Agreement. Most projects will be completed well within the project timeline, but it is acknowledged that unforeseen issues can arise that may delay project completion. GMS will work with project sponsors on a case-by-case basis for extension requests or other amendments to the project, the procedures for which are discussed in Section IV of this manual.

- **Mandatory project administration workshops.** Sponsors are required to attend a mandatory project administration workshop. During the workshop, GMS will explain the requirements for administering the LWCF grants. Additionally, GMS will provide information to help you understand the National Park Service's statutory provisions for Build America, Buy America Act. At the project administration workshop, GMS will provide you with a copy of the Financial Assistance Agreement that will need to be signed by the project sponsor and submitted to the GMS office. Also, during this workshop, GMS will provide you a copy of MoDNR's Sub-Recipients Information Form, which will also need to be completed and submitted to the GMS office. The Sub-Recipients Information Form is required in response to the Federal Funding Accountability and Transparency Act (FFATA) of 2006. The FFATA legislation requires information on federal awards (federal financial assistance and expenditures) to be available to the public via a single, searchable website, which is www.USASpending.gov. Additionally, GMS will provide instruction on how to register in MissouriBUYS, powered by MOVERS(<https://missouribuys.mo.gov/supplier-registration>). All project sponsors must register as suppliers in MissouriBUYS, powered by MOVERS in order to allow reimbursement funds to be transferred electronically to the sponsor's account at their bank or financial institution.
- **Financial Assistance Agreement (including all documents incorporated by reference).** At the workshop, you will receive a Financial Assistance Agreement to sign. The Financial Assistance Agreement is between the project sponsor and the Department of Natural Resources and includes the project number, used for identification purposes; the project title, which should be used on all future correspondence regarding the project; the project period, including a start date and an end date; a description of the project scope; the total project budget; and the amount of LWCF funds requested. Additionally, the agreement provides a signature line for the Division of State Parks' director and the project sponsor. By signing the Financial Assistance Agreement, you are agreeing to the financial assistance terms and to comply with the attachments incorporated by reference in the Financial Assistance Agreement, and as described in this guide.
- **Acquisition of real property.** Federally assisted real property acquisition, which includes property acquired with LWCF funds or property used as local match, must comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended. Also known as the "Uniform Act," this act ensures that landowners are fully informed of their rights and are justly compensated when selling or leasing private property or selling/leasing some type of interest in the property (such as an easement). As part of this assurance, the Uniform Act requires an appraisal and an appraisal review to be performed. If your project includes the acquisition of real property, Section II of this guide outlines the steps you must perform to show compliance with the Uniform Act. Appendix D provides the supporting documentation you will be required to submit to GMS to demonstrate compliance. In order for your project to remain active, you have **up to a year** from the date

your Financial Assistance Agreement is signed to provide GMS the documentation showing compliance with the Uniform Act (when required) and acquire the property.

- **Notice to Proceed (NTP).** Formal Notice to Proceed (NTP) letters or emails will be issued by GMS that provide approval to proceed with specified phases of the project. These notices will be issued once all compliance requirements have been met. A project sponsor will receive an initial NTP letter authorizing incurring costs on the project once a fully executed Financial Assistance Agreement is received. Depending on the scope of the project, the cost categories in the funding request and the timing of compliance documentation submittals, a project sponsor may receive several NTPs throughout the life of the project. For instance, a NTP would be issued for construction-related activities once GMS reviews plan specifications and required compliance documentation for contracts. For projects that include acquisition of real property, another NTP would be issued upon receipt of documentation demonstrating compliance with the Uniform Act. **It's important to remember that you will jeopardize your eligibility for reimbursement if you begin any construction activities or acquire real property before you receive a NTP for those particular phases of your project.** Any costs incurred prior to receiving NTP will not be reimbursed; however, some costs incurred prior to receiving NTP may be used as match, such as planning, engineering or environmental review costs (up to 10% of the total grant request). Costs in these categories incurred up to 18 months prior to the start date of the Financial Assistance Agreement may be used as match or reimbursement, if they were identified in your budget table and narrative as pre-award costs and approved by the National Park Service in the federal award. Examples of planning and engineering costs include development of design and or construction documents and development of bid packets. Examples of environmental review costs include costs associated with evaluation such as archaeological surveys, and completion of the Environmental Review Section of the application.
- **Project development.** Section III. Project Development outlines the required documents you will need to maintain in your project file; the procurement procedures you are required to use, including the bid process for goods and contracted labor; the permits you may be required to obtain; and the submission of project plans and specifications for review, including demonstration of compliance (where required and where possible) with the Americans with Disabilities Act (ADA). **Project costs that do not abide by the laws governing bid procedures outlined in this section will not be eligible for reimbursement or to be used as match.**
- **Requesting reimbursements and reporting project status.** Section IV. Reimbursement and Reporting Requirements describes the process for submitting funding reimbursement requests, including required cost documentation and time accounting records; submitting quarterly and annual status reports; and requesting project amendments, such as changes in project scope or time extensions. Because this is a reimbursable matching grant, you must pay for your entire project expenses per each billing cycle and then request a reimbursement of those costs using the cost-share ratio identified on the financial assistance agreement, following the steps outlined in Section IV. Reimbursement of costs will not exceed 50% of the total project costs.
- **Project completion.** Section V. Project Closeout outlines the process for submitting a final reimbursement request, the post-construction certification, as-built site plans and final LWCF boundary maps, recording the Declaration of Deed Restriction to the deeds, and other closeout documents that are required at the completion of the project to ensure the project meets all federal and state requirements.
- **Post-completion and long-term stewardship requirements.** Section VI describes the post-completion record retention, stewardship, operation, and maintenance requirements a project sponsor must follow to ensure longevity of the project. The LWCF Act contains provisions for protecting a project that utilizes LWCF funding. When LWCF monies are used to acquire or develop a project, the project must remain dedicated to public outdoor recreation use in perpetuity. Should a project sponsor ever intend to use any portion of project land protected under the LWCF Act for any other purpose than outdoor recreation, a conversion would be required. Section VI outlines the circumstances in which a conversion would be required. Additional information about Post Completion and Stewardship can be find in Chapter 8 of the LWCF State Assistance Program Manual V72. The web-based manual can be located at <https://www.nps.gov/subjects/lwcf/lwcf-manual.htm>.

- **Contact information.** For questions and to submit any correspondence regarding your LWCF project, including all required forms and documentation, please use the below contact information:

LWCF Planner
Grants Management Section
Missouri State Parks
PO Box 176
Jefferson City, MO 65102-0176
573-751-8661
MSPGRANTS@dnr.mo.gov

Project Compliance Requirements

By accepting the LWCF grant and signing the Financial Assistance Agreement, the project sponsor agrees to abide by the requirements outlined in the federal LWCF grant award, a copy of which was attached to the Financial Assistance Agreement. Please note in Part I, Paragraph D of the LWCF General Provisions (attachment A), wherever a term, condition, obligation, or requirement refers to the State, these also apply to the project sponsor and the project sponsor must require the same certifications and terms in all subcontracts, except where it is clear from the nature of the term, condition, obligation, or requirement that it is to apply solely to the State. For purposes of the General Provisions, the terms "State," "grantee," and "recipient" are deemed synonymous. The sponsor also agrees to abide by the terms and conditions outlined in the "Missouri Department of Natural Resources Federal Financial Assistance Agreements General Terms and Conditions." A copy of MoDNR's terms and conditions is found in Appendix B. A PDF copy can also be downloaded from the web at <https://mostateparks.com/page/61215/land-and-water-conservation-fund-lwcf-grants>. Your contractors, subcontractors, and suppliers are required to comply with all applicable Federal laws, regulations, and executive orders, regardless of whether set forth herein. The project sponsor and all delegates shall assist and enable the State of Missouri in complying with any requirements imposed by the U.S. Department of Interior as a condition of funding.

Project sponsors must comply with the following federal laws regarding nondiscrimination:

- Title VI of the Civil Rights Act of 1964 at 43 C.F.R. 17, Subpart A (<https://www.ecfr.gov/current/title-43/subtitle-A/part-17>).
- Section 504 of the Rehabilitation Act of 1973 at 43 C.F.R. 17, Subpart B (<https://www.ecfr.gov/current/title-43/subtitle-A/part-17/subpart-B>).
- Non-Discrimination on the Basis of Age at 43 C.F.R. 17, Subpart C (<https://www.ecfr.gov/current/title-43/subtitle-A/part-17/subpart-C>).
- Americans with Disabilities Act (ADA) Title II at 28 C.F.R. Part (<https://www.ecfr.gov/current/title-28/chapter-I/part-35>)
- ADA Accessibility Guidelines at 28 C.F.R. Part 36 (<https://www.ecfr.gov/current/title-28/chapter-I/part-36>)
- Title IX of the Education Amendments of 1972 at 43 C.F.R. 41 (<https://www.ecfr.gov/current/title-43/subtitle-A/part-41>)
- Specific discriminatory action prohibited at 28 C.F.R. §42.104(b)(2) (<https://www.ecfr.gov/current/title-28/chapter-I/part-42#42.104>)

SECTION II. REAL PROPERTY ACQUISITION

Acquisition of land may be accomplished through purchase, transfer, or by donation. Acquisition of real property interests through less than fee simple from another public agency, such as an easement or lease agreement, must include permanent recreation use easements or similar devices. Provisions stated in the easement or lease agreement cannot be detrimental to the proposed recreational development and cannot diminish the project sponsor's ability to enforce the LWCF Act provisions. A lease or easement agreement must be for a minimum of 25 years, must state that it cannot be revoked at will by the public agency landowner, and that the land must be retained in public recreation use in perpetuity. Additionally, the lease or agreement must include a statement that the public agency landowner assumes compliance responsibility for LWCF Act provisions in the event of default by the project sponsor or expiration of the agreement.

All acquisition of real property with LWCF funds, whether through purchase, donation, easement or lease, must comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (<https://www.ecfr.gov/current/title-49/subtitle-A/part-24>). Known as the "Uniform Act," this act also applies to acquiring property with non-federal funds when the intent is to apply for LWCF money for future development. In other words, a project sponsor cannot knowingly circumvent the federal law by acquiring real property with local funds and not follow the regulations of the act and then apply for a LWCF grant at a later date for project development. The Uniform Act ensures that landowners are fully informed of their rights and are justly compensated when selling or leasing property or selling/leasing any type of interest in the property. As part of this assurance, the Uniform Act requires an appraisal and an appraisal review to be performed that comply with the provisions outlined in the Uniform Appraisal Standards of Federal Land Acquisitions (UASFLA). Additionally, the act also covers the provision of relocation assistance to owners or tenants displaced by the acquisition. Below are the steps you must perform to show compliance with the Uniform Act when acquiring real property with LWCF funds. Appendix D provides the supporting documentation you will be required to submit to GMS to demonstrate compliance. You have up to one year to provide GMS the documentation showing compliance with the Uniform Act. **It's important to remember that you are not authorized to take title to the property, even if it's a donation, until GMS and NPS have viewed all compliance documentation, and you've received Notice to Proceed (NTP) email from GMS.**

This section outlines specific procedures under the Uniform Act that you must follow when acquiring land with LWCF funds. Appendix D provides a checklist of the documentation you are required to submit to GMS, as well as templates for the various letters and statements that are required.

- 1. Conduct title search.** Conduct a title search of the property to be acquired to determine ownership of the property, any liens or restrictions on the property, or any rights or interests held by others. It is recommended that a title company conduct the title search.
- 2. Contact seller.** Make initial contact with the landowner to see if the land might be available for sale or for donation, if the landowner would be willing to negotiate a permanent easement or right-of-way, or if the landowner would be willing to lease the property for the project. At this point, the price must not be negotiated because costs must be based on an appraisal. If the initial contact is made via a telephone call, you must follow up with a letter to indicate written notice of interest to the property and either hand deliver the letter or send it by certified or registered first-class mail, return receipt requested (documentation of the delivery date must be kept in the project file and a copy sent to the GMS for its records). The Notice of Interest letter must include a statement of landowner rights, which is that a landowner has the right of just compensation for the property. A sample Notice of Interest letter is provided in Appendix D. Unless the project sponsor has their own written guidelines that fully incorporate compliance requirements of the Uniform Act and all applicable state and local requirements, sponsors are required to enclose a copy of the Federal Highway Administration's (FHWA) booklet entitled, "Acquisition: Acquiring Real Property for Federal and Federal-Aid Programs and Projects." A PDF of the booklet can be found at http://www.fhwa.dot.gov/real_estate/uniform_act/acquisition/acquisition.pdf.
- 3. Determine relocation assistance eligibility.** Determine whether or not the owners, any business(es), or any tenants on the property might be eligible for relocation assistance. The landowner and any tenants must be informed of their relocation rights. It is recommended that both the owner and any tenants be given a copy of FHWA's booklet entitled, "Relocation: Your Rights and Benefits as a Displaced Person under the Federal Relocation Assistance Program," a PDF of which can be found at (https://www.fhwa.dot.gov/real_estate/publications/your_rights/rights2014.pdf). A relocation plan will be required for any persons displaced from the acquisition of the property. Refer to FHWA's "Relocation" booklet for more information.
- 4. Conduct appraisal and appraisal review.** Before negotiating a purchase price with the landowner, the real property to be acquired must be appraised. Have the property appraised by a licensed appraiser according to the Uniform Appraisal Standards of Federal Land Acquisitions (UASFLA), commonly referred to as the "Yellow Book," with the landowner given the

opportunity to accompany the appraiser. The appraiser must have a copy of the appraisal requirements, which are located on the web at <http://www.justice.gov/enrd/land-ack/Uniform-Appraisal-Standards.pdf>. (Also, see Appendix D for specific LWCF requirements concerning UAFSLA.) The appraisal must then be reviewed by a state-certified review appraiser. GMS does not provide appraisal services. For a list of certified appraisers, visit <https://pr.mo.gov/licensee-search-division.asp>. A list of qualified appraisers and review appraisers maintained by the Missouri Department of Transportation may be found at the following link:

https://epg.modot.org/forms/RW/Chapter%206_Appraisal%20and%20Appraisal%20Review/Roster%20of%20Approved%20Contract%20Appraisers.pdf. The names on these lists are not an endorsement and you are not required to use someone from either list. Projects sponsors must verify all qualifications to make sure they are suitable for your project. Exceptions to the appraisal requirement include the following conditions:

- a. Waiver valuation when fair market value is less than \$10,000.** If the acquisition of property is not complicated and a review of the available data suggests that the fair market value will likely be \$10,000 or less, an appraisal is not required. Instead, a waiver valuation from a qualified person knowledgeable of the general market values in the project area will be acceptable. A sample Waiver Valuation has been provided in Appendix D. Note that the averaging of the final values of two or more appraisal reports to estimate the fair market value of a property is unacceptable and does not meet the requirements of the Uniform Act.
 - b. When property is being donated.** An appraisal is also not required when the landowner is donating the property and releases the project sponsor from their obligation to appraise the property. However, if the value of the donated property is being used as the project sponsor's match, an appraisal or waiver valuation will still need to be conducted to determine the fair market value of the property, in order to determine the match amount.
- 5. Establishment and Offer of Just Compensation.** Before initiating negotiations with the property owner, the project sponsor must establish an amount which they believe is just compensation for the real property. The amount can't be less than the approved appraisal of the fair market value of the property and must take into account the value of allowable damages or benefits to any remaining property. The project sponsor will then make a written offer to the owner to acquire the property for the full amount believed to be just compensation. The written offer must enclose a copy of the appraisal and appraisal review and must be either hand delivered or sent by certified or registered first-class mail, return receipt requested (documentation of the delivery date must be kept in the project file and a copy sent to the GMS for its records). Appendix D provides a sample Offer of Just Compensation.
- 6. Statement of Just Compensation.** The Offer of Just Compensation must also include a written statement for the basis of the Offer of Just Compensation. The statement must include the amount offered as just compensation; a description and location identification of the real property and/or the interest in the real property to be acquired; identification of the buildings, structures and other improvements which are included as part of the offer; and whether or not there are any other separately held ownerships in the property (such as tenant-owned improvements) – the statement must indicate that these ownership interests are not included in this offer. If the project sponsor is acquiring a portion of the property and not the whole, there may be damages or benefits to the remaining property. The Statement of Just Compensation must also reflect these damages or benefits. A sample Statement of Just Compensation is provided in Appendix D.
- 7. Real property donations.** In the case where the landowner is willing to donate the real property, an Offer of Just Compensation and a Statement of Just Compensation are not required. Instead, the landowner must sign a Waiver of Right to Just Compensation, which states that the landowner waives their rights to just compensation and agrees to donate the property or property interest. Appendix D provides a sample Waiver of Right to Just Compensation. In some cases, a landowner may be willing to sell real property for less than the full market value but is not able to donate the entire value of the land. The difference between the sale price and the appraised fair market value can be considered donated land value. For a LWCF project, federal reimbursement may be provided for the purchase part of the acquisition but not for the donated part. However, the donated value can be used as match for the purchase cost of the same tract of property or for development costs of the project. Landowners making partial donations must also sign a Waiver of Right to Just Compensation. By signing, the landowner is acknowledging a partial donation of the property and waives his or her rights to compensation for the donated parcel. The appraisal requirements outlined above apply to both full and partial donations, as do the requirements for notifying the landowner and any tenants of their rights.
- 8. Landowner negotiations.** Once the landowner has received the Offer of Just Compensation and Statement of Just Compensation, the owner must be given reasonable opportunity to consider the offer and present any additional information or material the owner believes is relevant to determining the value of the property. The owner must also be given opportunity to suggest modifications to the proposed terms and conditions of the purchase.
- 9. Updating Offer of Just Compensation.** The project sponsor must have the initial appraisal updated or obtain a new appraisal if the information presented by the owner indicates the need is warranted; or if a material change in the character or condition of the property is such that it requires updated information; or if a significant delay has occurred since the initial appraisal (the purchase must be made within a year of the initial appraisal being conducted, or a new appraisal will required). If the new

appraisal information indicates that a change in the purchase offer is warranted, the sponsor must provide the landowner with a new Offer of Just Compensation and Statement of Just Compensation reflecting this updated appraisal information.

- 10. Provide justification for purchase offer if higher than appraised value.** The purchase price for the property may exceed the amount offered as just compensation when reasonable efforts to negotiate an agreement at that amount have failed and the project sponsor considers the higher price as being reasonable, prudent and in the public interest. A detailed and well-documented statement on this difference with all pertinent appraisal documents and a history of negotiations documenting discussions of price between the landowner and the sponsor should be submitted. The statement should also indicate the importance of the proposed purchase as opposed to other alternative sites, or other justification regarding the need to purchase the subject property at a higher amount. If GMS and NPS agree the higher negotiated price represents a reasonable cost, that amount can be eligible for assistance if sufficient funds are available in the fiscal year apportionment and have not already been obligated to other grant projects.
- 11. Notice to Proceed required before purchasing the property.** Once GMS reviews all of the above required compliance documentation and concur with the findings, a Notice to Proceed (NTP) will be sent to the project sponsor. At this point, the sponsor will be able to move forward in acquiring the real property. **Do not acquire the property until receiving the NTP.**
- 12. Record the deed.** Once the sponsor has paid the negotiated purchase price, any closing costs, relocation benefits, etc., and taken title to the property, the deed must be recorded with the Records Officer and a copy submitted to GMS. Sponsors must include a deed clause indicating the land will remain in public outdoor recreation use in perpetuity (Notice of Limitation of Use). The deed must also include a non-discrimination statement as required by [43 C.F.R. § 17](#).
- 13. Submit reimbursement request.** A reimbursement request for the LWCF share (50) of the acquisition costs can then be submitted to GMS, the process for which is outlined in Section IV.

Please remember to follow these procedures when acquiring real property for the purposes of this project and obtain a notice to proceed. Failure to comply with this federal law may result in the termination of your project, as LWCF monies cannot be used to construct on property that was not acquired in accordance with federal acquisition laws.

SECTION III. PROJECT DEVELOPMENT

Maintaining Your LWCF Project File

Before you begin developing your project, you'll need to create a project file that includes relevant documents. The file must be made available upon request for audit purposes and must be maintained for a period of five years starting from the date of submission of the final payment request (see "Record Retention" in Section VI of this manual). The project file will also help keep your project organized and on-track as you complete each stage of the project. The project file should include the following documents:

- **LWCF application and supporting documentation.** A copy of your LWCF grant request application and the supporting documentation you were required to submit with the application should be kept in your project file. GMS uses the project narrative, budget table and budget narrative from your application to develop the project scope and budget indicated on the Financial Assistance Agreement, so a copy of the application is a helpful reference document to have in your file.
- **Proof of land ownership or leaseholder/easement rights.** A copy of the land deed, lease or easement agreement is required if the project sponsor currently owns or leases the land for the project or has a permanent easement. The lease or easement agreement must be for a minimum of 25 years and must state that it cannot be revoked at will by the public agency landowner and that the land must be retained in public recreation use in perpetuity. Additionally, the agreement must include a statement that the public agency landowner assumes compliance responsibility for the LWCF Act provisions in the event of default by the project sponsor or expiration of the agreement. Project closeout will require the property interest to be updated to document the perpetual stewardship requirements for public access associated with accepting LWCF funds.
- **Financial Assistance Agreement (FAA) and Federal Award.** A signed copy of the Financial Assistance Agreement and the National Park Service federal award must be kept in your project file. The Financial Assistance Agreement is between the sponsor and the Department of Natural Resources and includes the project number (used for identification purposes), the project title, which should be used on all future correspondence regarding the project; the project period, including a start date and an end date; a description of the project scope; the total project budget; and the amount of LWCF funds requested. Additionally, the agreement provides a signature line for Division of State Parks' Director and the project sponsor, also referred to as the subrecipient. Signature on the Financial Assistance Agreement is the subrecipient's acceptance of all federal laws, agency policies regulations and procedures applicable to federal financial assistance awards and is an agreement to require the language of the certifications and terms applicable to be included in sub-award documents at all tiers, and that the sub-recipient shall certify and disclose accordingly pursuant to [2 CFR 200.331](#). All flow down requirements imposed on the sub-recipient by the Department is to ensure the LWCF award is used in accordance with federal statutes, regulations, and the terms and conditions of the LWCF award. The sub-recipient is accountable to the Department for compliance with federal requirements. In turn, the Department is responsible to the NPS for ensuring that sub-recipients comply with LWCF's general terms and conditions. The most current volume of the NPS LWCF State Assistance Program Manual can be located at: <https://www.nps.gov/subjects/lwcf/lwcf-manual.htm>. A sample FAA is found in Appendix F.
- **Subrecipient Information Form.** Retain a copy of the signed Subrecipient Information Form that you submitted as part of your application. The Subrecipient Information Form is a requirement of the Federal Funding Accountability and Transparency Act (FFATA), which provides oversight and transparency for the expenditure of federal funds.
- **Registration as a Supplier in MissouriBUYS, powered by MOVERS.** Keep a copy of the notification stating the project sponsor is in Spend Authorized status. This process allows electronic reimbursement funds to be transferred to your agency's or organization's bank account.
- **Real property acquisition documentation.** For land acquisition projects, the project file should retain a copy of the Notice to Proceed and each of the documents listed on the Real Property Acquisition Documentation Checklist in Appendix D.
- **Notice to Proceed.** Copies of the Notice to Proceed (NTP) letters or emails from GMS must be retained in your file as well. **You are not authorized to start any construction activities, acquire property or materials before receiving a NTP letter or email.**

Documents that will be added to your project file as you move toward completing your project include the following, which must be retained for the retention period as well:

- Planning and engineering documents and specifications
- A copy of your written procurement procedures, including documentation that your procedures comply with civil rights requirements and minority and women business enterprises
- Bid documents and signed contracts
- Any required permits
- All written correspondence between you and GMS, and you and any contractor, supplier, etc., working on your project
- Copies of project amendment requests, if required
- Final LWCF boundary map
- As-built facility plans documenting ADA compliance

- A written policy regarding use of Other Power-Driven Mobility Devices (OPDMD) as outlined below (if required)
- Reimbursement documentation, including copies of invoices, employee and volunteer timesheets, equipment use logs, etc. (see Section IV of this guide for more detail)
- Completed quarterly and annual report forms, as described in Section IV
- Project close-out documentation, which is described in Section V of this guide

Project Development Procedures

Project sponsors must comply with federal, state and local laws and regulations for entity type, type of project, and dollar amount of materials or services being purchased to perform the project. The following guidance highlights frequent terms affecting most contracts but is not an exhaustive list.

Development of a project site may be by contract, force account (in-house labor), in-kind contribution, donation, or a combination of these methods. The procedures regarding each of these methods are described below, as are the procurement procedures for purchasing services, materials, and equipment. The project sponsor should use their own documented procurement procedures that reflect applicable state and local laws and regulations, provided that procurement conforms to the standards set forth in the "Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards" (<http://www.ecfr.gov/cgi-bin/text-idx?SID=e5a3e230b18df274b27ba83528b43156&mc=true&node=pt2.1.200&rgn=div5>); general procurement standards, including conflict of interest, may be found at [2 CFR 200.318](#) and methods to follow at [2 CFR 300.320](#), with varying requirements depending on the type of entity. Every contract and sub-contract must include the terms listed in [Appendix II to Part 200 of 2 CFR](#). Project sponsors must also comply with the terms and conditions outlined in the "Missouri Department of Natural Resources Federal Financial Assistance Agreements General Terms and Conditions," and ensure all subcontractors also comply. A copy of MoDNR's terms and conditions is found in Appendix B.

Contracting with Small and Minority Businesses, Women's Business Enterprises, Veteran- Owned Businesses and Labor Surplus Area Firms:

Pursuant to 2 C.F.R. § 200.321, it is the Federal Government's policy to award a fair share of contracts to small and minority businesses, women's business enterprises, veteran-owned businesses and labor surplus area firms. Project sponsors must take all necessary affirmative steps to assure that these types of businesses are used when possible as sources of supplies, equipment, construction, and services. Affirmative steps must include:

1. These business types are included on solicitation lists;
2. These business types are solicited whenever they are deemed eligible as potential sources;
3. Dividing procurement transactions into separate procurements to permit maximum participation by these business types;
4. Establishing delivery schedules (for example, the percentage of an order to be delivered by a given date of each month) that encourage participation by these business types;
5. Utilizing organizations such as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
6. Requiring a contractor under a Federal Award to apply this section to subcontracts.

All project sponsors are required to keep a copy of their procedures for compliance with these small and minority businesses, women's businesses, veteran-owned businesses, and labor surplus firms in their grant file. A copy may be requested by GMS to verify compliance.

Build America, Buy America Act (BABA)

Projects with a Total Project Cost (Federal Award plus Local Match) of \$250,000 or Greater:

The Buy America Preference defines infrastructure as "...public infrastructure projects in the United States, which includes, at a minimum, the structures, facilities, and equipment for roads, highways, and bridges; public transportation; dams, ports, harbors, and other maritime facilities; intercity passenger and freight railroads; freight and intermodal facilities; airports; water systems, including drinking water and wastewater systems; electrical transmission facilities and systems; utilities; broadband infrastructure; and buildings and real property; and structures, facilities, and equipment that generate, transport, and distribute energy including electric vehicle (EV) charging."

On Feb. 20, 2024, the National Park Service (NPS) issued a "non-applicability" determination in response to a BABAA waiver that MSP submitted for a splash pad. The determination concluded that the LWCF grant award did not fund any of the enumerated

categories of “infrastructure” within the scope of the Buy America Preference and a waiver was not needed. In keeping with this determination by the NPS, MSP considers the preponderance of project facilities and amenities funded through the Land & Water Conservation Fund (LWCF) to fall outside the definition of “infrastructure” as defined by the Buy America Preference, and thus you do not need to include the Build America, Buy America Certification in your bid packets for the following project types.

These include, but are not limited to:

- Playgrounds and playground equipment;
- Splash pads/spray gardens, swimming pools, and swim beaches;
- Ball fields and play/sports courts;
- Shooting/archery ranges and fishing/hunting facilities;
- Skating facilities;
- Dog parks;
- Running tracks;
- Picnic facilities, pavilions and shelters;
- Camping facilities and simple lodging facilities, such as yurts and camper cabins;
- Trails and trail/trailhead amenities;
- Boating facilities;
- Outdoor exhibit and interpretive facilities;
- Spectator facilities;
- Community gardens;
- Support facilities such as restrooms, maintenance buildings, visitor/nature centers, equipment rental spaces (such as kayak and canoe lockers), ancillary park roads, parking lots, and sidewalks;
- Short utility/water/sewer lines to connect facilities and amenities to main utility lines

LWCF projects that include major infrastructure, such as primary park roads, main utility lines, and large drinking water and wastewater systems, meet the definition of “infrastructure” as defined by the Buy America Preference, so these construction activities will require BABAA certification. If a part of your project is considered major infrastructure, then you will need to include all the language for contracting for materials or services in bid packets and advertisement as it is listed in Appendix E.

Projects with a Total Project Cost (Federal Award plus Local Match) of \$249,999 or Less:

The followings terms apply for Financial Assistance Agreements that do not currently and are anticipated exceed the Simplified Acquisition Threshold of \$250,000. The Department of the Interior (DOI) has been issued a Small Grant General Applicability Waiver that provides approval to waive the Buy America Preference for Financial Assistance Agreements when the total award amount of an agreement does not exceed \$250,000. (<https://www.doi.gov/grants/BuyAmerica/GeneralApplicabilityWaivers>). While this waiver permits the use of non-domestic materials for Financial Assistance Agreements that do not exceed \$250,000, recipients shall still maximize the use of domestic materials to the maximum extent possible. If your project qualifies under this waiver, you do not need to include the Build America, Buy America Certification in your bid packets.

Waivers Requests for the Build America, Buy America Provision

When necessary, recipients may apply for, and the Department of the Interior (DOI) may grant, a waiver from BABA requirements, subject to review by the Made in America Office. The DOI may waive the application of the domestic content procurement preference in any case in which it is determined that one of the below circumstances applies:

1. Non-availability Waiver: the types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality;
2. Unreasonable Cost Waiver: the inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent; or
3. Public Interest Waiver: applying the domestic content procurement reference would be inconsistent with the public interest.

If a general applicability waiver does not already apply, and a recipient believes that one of the above circumstances applies to an award, a request to waive the application of the domestic content procurement preference may be submitted to the GMS in writing. When a waiver is requested, all construction activities must halt on the project until the waiver has been approved by the Made In America Office. Waiver request can take anywhere from 9 months to 2 years to be approved. Waiver requests shall include the below information. The waiver shall not include any Privacy Act information, sensitive data, or proprietary information within their waiver request. Waiver requests will be posted to "[Buy America" Domestic Sourcing Guidance and Waiver Process for](#)

[DOI Financial Assistance Agreements I U.S. Department of the Interior](#) and are subject to public comment periods of no less than 15 days. Waiver requests will also be reviewed by the Made in America Office.

1. Type of waiver requested (non-availability, unreasonable cost, or public interest).
2. Requesting entity and Unique Entity Identifier (UEI) submitting the request.
3. Department of Interior Bureau or Office who issued the award.
4. Federal financial assistance listing name and number (reference block 2 on DOI Notice of Award)
5. Financial assistance title of project (reference block 8 on DOI Notice of Award).
6. Federal Award Identification Number (FAIN).
7. Federal funding amount (reference block 11.m. on DO Notice of Award).
8. Total cost of Infrastructure expenditures (includes federal and non-federal funds to the extent known).
9. Infrastructure project description(s) and location(s) (to the extent known).
10. List of iron or steel item(s), manufactured goods, and construction material(s) the recipient seeks to waive from Buy America requirements. Include the name, cost, countries of origin (if known), and relevant PSC or NAICS code for each.
11. A certification that the recipient made a good faith effort to solicit bids for domestic products supported by terms included in requests for proposals, contracts, and nonproprietary communications with the prime contractor.
12. A statement of waiver justification, including a description of efforts made (e.g., market research, industry outreach) by the recipient, in an attempt to avoid the need for a waiver. Such a justification may cite, if applicable, the absence of any Buy America-compliant bids received in response to a solicitation.
13. Anticipated impact if no waiver is issued. Approved waivers will be posted at Approved DOI General Applicability Waivers I U.S. Department of the Interior; recipients requesting a waiver will be notified of their waiver request determination by a Financial Assistance Awarding Officer.

For additional information about “Buy America” Domestic Sourcing Guidance and Waiver Process for the Department of Interior Financial Assistance Agreements see <https://www.doi.gov/grants/BuyAmerica>.

Contracting for Engineering and Design Related Services:

All procurement of engineering and design services shall conform to the Brooks Act (Qualifications Based Selection) [RSMo Chapter 8 Section 291](#). Per MoDNR terms and conditions outlined in Appendix B, every effort must be made, to the extent permitted by law and state and federal executive orders, to solicit bids from minority business enterprises (MBE) and women business enterprises (WBE). To find certified MBE and WBE firms, use the Missouri Office of Equal Opportunity’s MBE/WBE search webpage (<https://apps1.mo.gov/MWBCertifiedFirms/>) and search by “Services Provided.” The following statement must be included in all Request for Qualification and advertisement for bid: ***“The [insert project sponsor name] hereby notifies all bidders that it will affirmatively ensure that in any contract entered into pursuant to this advertisement, individuals will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, religion, creed, sex, age, ancestry or national origin in consideration for an award. Federal Land and Water Conservation Funds are being used in this project, and all relevant federal, state, and local requirements apply.”***

A copy of the Request for Qualification (RFQ) and advertisement must be submitted to GMS for approval prior to advertising. GMS will make every effort to review and approve the RFQ within two weeks of receiving. Note that GMS review of the RFQ does not relieve you of the responsibility for full compliance with federal, state and local regulations applicable to your project. Once you receive the notice to proceed with advertising from GMS, the project sponsor shall formally advertise through its website and for a minimum of three weeks (one insertion per week for a total of three insertions over a 3-week period) in a local newspaper. In evaluating the qualifications of each firm the project sponsor shall use the following criteria from [8.289 RSMo](#) :

1. The specialized experience and technical competence of the firm with respect to the type of service required.
2. The capacity and Capability of the firm to perform the work in question, including specialized services, within the time limitation fixed for the completion of the project.
3. The past record of performance of the firm with respect to such factors as control of costs, quality of work and ability to meet schedules.
4. The firm’s proximity to and familiarity with the area in which the project is located.

After evaluating each firm, follow [8.291 RSMo](#) to negotiate a contract for services:

1. The project sponsor shall list three highly qualified firms and shall then select the firm considered best qualified and capable of performing the desired work and negotiate a contract for the project with the firm selected.
2. For a basis for negotiations the project sponsor shall prepare a written description of the scope of the proposed services.
3. If the project sponsor is unable to negotiate a satisfactory contract with the firm selected, negotiations with that firm shall be terminated. The project sponsor shall then undertake negotiations with another of the qualified firms selected. If there is a failing of accord with the second firm, negotiations with such firm shall be terminated. The project sponsor shall then undertake negotiations with the third qualified firm.
4. If the project sponsor is unable to negotiate a contract with any of the selected firms, the project sponsor shall reevaluate the necessary architectural, engineering or land surveying services, including the scope and reasonable fee requirements, again compile a list of qualified firms and proceed in accordance with the provisions of sections 8.285 to 8.291 RSMo.
5. The provisions of sections 8.285 to 8.291 RSMo. shall not apply to any political subdivision which adopts a qualification-based selection procedure commensurate with state policy for the procurement of architectural, engineering and land surveying services.

Project sponsors must submit proof of the procurement process prior to signing a contract with the firm for GMS approval.

Documentation includes:

- Proof of advertisement including the affidavit of publication
- List of top three contractors
- Resume of selected contractor
- A justification statement of why they were deemed the most qualified

The final contract must include the following forms:

- **Certification Regarding Debarment, Suspension, and Other Responsibility Matters, Drug-Free Workplace Requirements and Lobbying:** found in Appendix E. To ensure that ineligible contractors are not awarded a contract, project sponsors are required to check the Contractor Debarment List maintained by the Missouri Department of Labor and Industrial Relations, at <https://labor.mo.gov/contractor-debarment-list> . Project sponsors are also required to check with sam.gov to determine if a contractor has been declared ineligible to receive federal contracts.
- **Business Entity Certification, Enrollment Documentation, and Affidavit of Work Authorization:** Found in Appendix E. All contractors must affirm their enrollment and participation in a federal work authorization program with respect to employees working in connection with the project. Every such business entity shall also sign an affidavit affirming that it does not knowingly employ any person who is an unauthorized alien in connection with the project. Documentation shall include 1) EITHER the E-Verify Employment Eligibility Verification page listing the company name and company ID OR a page from the E-Verify Memorandum of Understanding (MOU) listing the company name and the MOU signature page completed and signed, at minimum, by the company and the Department of Homeland Security – Verification Division. If the signature page of the MOU lists the company’s name and company ID, then no additional pages of the MOU must be submitted; AND 2) submit a completed, notarized Affidavit of Work Authorization. Should you need assistance in obtaining documentation you can contact the E-Verify federal work authorization program (Website: http://www.dhs.gov/files/programs/gc_1185221678150.shtm; Phone: 888-464-4218; Email: e-verify@dhs.gov).

Once GMS has received your procurement packet request, a notice to proceed will be issued that allows the project sponsor to contract with the firm. The project sponsor will have 15 days from the date that the contract is fully executed to send GMS a copy of the final contract including the compliance forms listed above. Any changes made to the contract after it has been signed must be submitted to GMS for approval before is negotiated.

Purchase/Service Contracts Under \$ 25,000:

After receipt of the appropriate NTP letters or emails, no other approval is required from GMS for purchase or service contracts under \$25,000. You should follow the procurement procedures that were submitted at time of application for contracts under \$25,000. If applicable, materials or supplies purchased must meet the Build America, Buy America Act (see section above) and the Build America, Buy America Certification form must be filled out. GMS ask that you make every effort to solicit a fair number of bids or estimates to ensure that most advantageous and cost-efficient contract is made for your project. You are not required to provide documentation of this procurement to GMS. However, you are required to maintain a record of it in your file for auditing purposes.

Purchase/Service Contracts \$25,000 or Greater:

Per MoDNR's terms and conditions outlined in Appendix D, every effort must be made to solicit bids from minority business enterprises (MBE) and women business enterprises (WBE). To find certified MBE and WBE firms, use the Missouri Office of Equal Opportunity's MBE/WBE search webpage (<https://apps1.mo.gov/MWBCertifiedFirms/>) and search by "Services Provided." The following statement must be included in all advertisement and bid packets for bid: ***"The [insert project sponsor name] hereby notifies all bidders that it will affirmatively ensure that in any contract entered into pursuant to this advertisement, individuals will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, religion, creed, sex, age, ancestry or national origin in consideration for an award. Federal Land and Water Conservation Funds are being used in this project, and all relevant federal, state, and local requirements apply."***

Bids must be solicited through a formally advertised, sealed-bid process. All procurement transactions under this Federal award must be conducted in a manner that provides full and open competition and is consistent with the standards of [2 CFR 200.319](#). To ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statement of work or invitations for bids must be excluded from competing on those procurements. Examples of situation that may restrict competition included, but are not limited to:

- 1) Placing unreasonable requirements on firms for them to qualify to do business;
- 2) Requiring unnecessary experience and excessive bonding;
- 3) Noncompetitive pricing practices between firms or between affiliated companies;
- 4) Noncompetitive contracts to consultants that are on retainer contracts;
- 5) Organizational conflicts of interest;
- 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
- 7) Any arbitrary action in the procurement process

Construction specifications must include all environmental commitments indicated in the Environmental Review Section of the application, any Special Conditions list on the FAA and all LWCF Compliance Documents listed below. A copy of all bidding documents must be submitted to GMS for approval prior to advertising for bids. GMS staff will make every effort to review and approve your bid documents within two weeks of receiving. Note that GMS review of bids and contracts does not relieve you of the responsibility for full compliance with federal, state and local regulations applicable to your project.

Once you have received the NTP with advertising, the request for bids must be publicly advertised for a minimum of three weeks (one insertion per week for a total of three insertions over a 3-week period) in a local newspaper and a copy of the affidavit of publication must be submitted to GMS as proof of compliance. The following statement must be included in all advertisement for bid: ***"The [insert project sponsor name] hereby notifies all bidders that it will affirmatively ensure that in any contract entered into pursuant to this advertisement, individuals will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, religion, creed, sex, age, ancestry or national origin in consideration for an award. Federal Land and Water Conservation Funds are being used in this project, and all relevant federal, state, and local requirements apply."*** Project sponsors are required to advertise bidding opportunities in multiple publications and formats so that all interested contractors and suppliers have opportunity to submit bids.

Contracts must be awarded to the lowest responsible and responsive contractors or suppliers who have the ability to perform successfully under the terms and conditions of the contract. Prior approval must be obtained from GMS before awarding the contract. Submit a copy of the bid tabulation summary sheet and a copy of the bid being recommended for award. When the project sponsor considers the lowest bidder unresponsive or not responsible, the next lowest bidder may be recommended for award. If a contract is being recommended for award to any other than the lowest bidder, a letter of justification for this action must be sent to GMS with the bid summary. Copies of all awarded contracts must be submitted to GMS within 15 (fifteen) days after awarding the contract and must physically incorporate the General Conditions for Federally Funded/Assisted Construction Projects. Any proposed change orders to the contract must first be approved by GMS before the change order is negotiated.

*Pursuant to 2 CFR 200.317, project sponsors who are state agencies must follow the same policies and procedures they use for procurements from non-federal funds but also must incorporate the contract compliance provisions for federal LWCF funds required in this manual.

The following documentation must be included in the bidding documents:

Affidavit of Compliance with Prevailing Wage Law. Per [Chapter 7 section B of the Department of Interior LWCF Federal Financial Assistance Manual volume 72.1](#), the LWCF program is exempt from the provisions concerning the Davis-Bacon

Act. If Missouri state prevailing wage law applies, it must be complied with for all projects considered “public works” pursuant to 290.230 RSMo and 8 CSR 30-3.010. At the completion of the construction work, the contractor must sign an affidavit indicating compliance with the act. The affidavit is found in Appendix E. Contract Compliance Required Documentation and can also be downloaded as a PDF copy from <https://mostateparks.com/page/61215/land-and-water-conservation-fund-lwcf-grants>.

Certification of Non-Segregated Facilities, found in Appendix E. A PDF copy can also be downloaded from <https://mostateparks.com/page/61215/land-and-water-conservation-fund-lwcf-grants>.

Certification Regarding Debarment, Suspension, and Other Responsibility Matters, Drug Free Workplace Requirements and Lobbying, found in Appendix E. A PDF copy can also be downloaded from <https://mostateparks.com/page/61215/land-and-water-conservation-fund-lwcf-grants>. To ensure that ineligible contractors are not awarded a contract, project sponsors are required to check the Contractor Debarment List maintained by the Missouri Department of Labor and Industrial Relations, at <https://labor.mo.gov/contractor-debarment-list>. Project sponsors are also required to check with the U.S. Department of Labor’s Office of Federal Contract Compliance Programs for a list of contractors that have been declared ineligible to receive federal contracts (<https://www.dol.gov/ofccp/regs/compliance/preaward/debarlst.htm>).

Build America, Buy America (BABA) Certification and BABA language for bid packet, found in Appendix E. A PDF copy can also be downloaded from <https://mostateparks.com/page/61215/land-and-water-conservation-fund-lwcf-grants>. See the Build America, Buy America Act section above to see if your project is required to meet this provision.

Business Entity Certification, Enrollment Documentation, and Affidavit of Work Authorization, found in Appendix E. A PDF copy can also be downloaded from <https://mostateparks.com/page/61215/land-and-water-conservation-fund-lwcf-grants>. All contractors must affirm their enrollment and participation in a federal work authorization program with respect to employees working in connection with the project. Every such business entity shall also sign an affidavit affirming that it does not knowingly employ any person who is an unauthorized alien in connection with the project. Documentation shall include 1) EITHER the E-Verify Employment Eligibility Verification page listing the company name and company ID OR a page from the E-Verify Memorandum of Understanding (MOU) listing the company name and the MOU signature page completed and signed, at minimum, by the company and the Department of Homeland Security – Verification Division. If the signature page of the MOU lists the company’s name and company ID, then no additional pages of the MOU must be submitted; AND 2) submit a completed, notarized Affidavit of Work Authorization (sample included on page 10-13). Should you need assistance in obtaining documentation you can contact the E-Verify federal work authorization program (Website: http://www.dhs.gov/files/programs/gc_1185221678150.shtm; Phone: 888-464-4218; Email: e-verify@dhs.gov).

Force Account Labor and Use of In-House Equipment:

Project sponsors must ensure that their in-house employees are legally allowed to work in the United States through the E-Verify system (<http://www.uscis.gov/e-verify>). Salaries of in-house staff are eligible for the project sponsor’s match. Use of an agency’s or organization’s internal labor force should be valued at the current hourly rate of individual employees working on the project and should be directly tied to completing the elements listed in the project scope. For use of in-house equipment, use the Federal Emergency Management Agency’s (FEMA) Schedule of Equipment Rates to determine the cost of operating various pieces of mechanized equipment. The most current FEMA Schedule of Equipment Rates can be found at <https://www.fema.gov/media-library/assets/documents/136901>. Documenting the use of force account labor and use of in-house equipment is discussed in Section IV. Reimbursement and Reporting Requirements.

Donations:

The value of volunteer labor can also be used for the project sponsor’s match. A volunteer’s donated time should be valued at the current minimum wage rate per hour unless the person is professionally skilled in the work being performed on the project. When this is the case, the wage rate this individual is normally paid for performing this service may be used. For donated materials, use the fair market value of those items. Documenting the use of volunteer labor and donated material as match is discussed in Section IV as well.

Temporary Signage:

In accordance with 54 U.S.C. 200307, all development projects totaling \$500,000 or more are required to place appropriate temporary signage on or near the affected site so as to indicate the action is a product of funding derived from Outer Continental Shelf receipts made available through the LWCF. Such signage shall indicate the percentage and dollar amounts financed by federal and non-federal funds. For development projects, such temporary signage shall be placed at the initiation of construction and remain until project is completed.

Unless precluded by local sign ordinances, temporary signs shall be no less than 2 feet by 3 feet. The LWCF Logo is required on temporary signs and can be located in Appendix E. The size of lettering should be based on the amount of information placed on the sign. The selection of colors will be at the discretion of the project sponsor; however, there should be sufficient contrast between the background and the lettering to make the sign readily visible without being intrusive. The sign should include the source, percent, and dollar amount of all federal, state and/or local funds. The second line on the temporary sign will indicate whether the project is acquisition, development, or both. In addition to the NPS, the administrative acknowledgement may include the state agency responsible for the LWCF program. Here is a suggested format:

THE CITY OF XXXXX
Public Outdoor Recreation Site Development Aided by the Federal
LAND AND WATER CONSERVATION FUND
Administered by the
Missouri Department of Natural Resources
and
the National Park Service
U.S. Department of the Interior
Funding
LWCF 50% \$250,000
City of XXX 50% \$250,000
Total Project \$500,000
Source of funding includes monies derived from Outer Continental Shelf Federal Receipts

Section 106 Compliance

Under the National Historic Preservation Act (NHPA), Congress established a comprehensive program to preserve the historical, archaeological and cultural resources of our nation. Section 106 of NHPA requires federal agencies to consider the effects on these resources of projects they carry out, approve or fund. The State Historic Preservation Office (SHPO) is the agency authorized for ensuring Section 106 compliance. If the current project area or scope of work is changed or a borrow area is included in the project, work must stop, and appropriate information must be provided to SHPO for further review and comment. If potential historic, cultural, archaeological, or paleontological resources are encountered during construction activities, work shall cease immediately and SHPO and GMS must be contacted for further consultation. No work can resume until a new Section 106 Review is satisfactorily completed.

Permitting

All Federal and State permits required to complete your project were listed on your original LWCF application question 82. All Federal Permits were acquired before a federal award is received or have been listed as a Special Condition on the FAA. A copy of all permits must be sent to GMS before construction activities can begin on your project. To ensure that your project follows all permitting requirements, it is recommended you re-visit MoDNR's Permits, Certification, Registration and Licenses website (<https://dnr.mo.gov/permits-certifications-registrations-licenses>) to determine if any new permits are required for your project.

Invasive Species

Other factors to consider when developing your project include landscaping with native species and implementing measures to prevent the spread of noxious or invasive species. Project sponsors are encouraged to landscape with native species whenever feasible, and to make sure all equipment brought on site is cleaned and inspected prior to use to ensure there is no plant debris or seeds from noxious weeds being spread by the equipment. For information about controlling noxious weeds, see the Missouri Department of Agriculture's website at <https://agriculture.mo.gov/plants/pests/noxiousweeds.php>. For projects that incorporate boat ramps or other boating access, it is recommended that information be provided to users on methods for preventing the spread of zebra mussels, a harmful exotic species that spreads rapidly by "hitchhiking" on boats. Information can be provided

either through signage or through print publication. To learn more about controlling the spread of zebra mussels, visit the Missouri Department of Conservation website at <https://mdc.mo.gov/wildlife/invasive-animals/zebra-mussel-control>.

Accessibility

As you begin designing your project, you must take into consideration the access needs of people with varying physical abilities. Failure to plan for and develop the project in accordance with accessibility requirements may result in the need for additional work before the final reimbursement can be released, and if corrective action is not feasible may require repayment of previously disbursed funds.

Federal regulations regarding accessibility and outdoor recreation are promulgated under two separate statutes, the Americans with Disabilities Act (ADA) and the Architectural Barriers Act (ABA). The ADA is a broad federal civil rights law that prohibits discrimination based on disability. The law defines “disability” as “...a physical or mental impairment that substantially limits a major life activity.” The ADA has five main sections, or “titles,” of which the relevant ones for this administration guide are Title II, which covers services and programs of state and local governments such as school districts, townships, cities, and counties; and Title III, which covers public accommodations. Title II reads in part, “No qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of services, programs, or activities of a public entity...” Title III reads, “No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any private entity who owns, leases (or leases to), or operates a place of public accommodation.” For more information about ADA, the U.S. Department of Justice (DOJ) has provided an online manual that helps explain what state and local governments must do to ensure that their services, programs, and activities are provided to the public in a nondiscriminatory manner (<https://www.ada.gov/resources/?filters=>).

To provide guidance on how to comply with the ADA, the Department of Justice has issued the 2010 ADA Standards for Accessible Design (https://www.ada.gov/2010ADASTandards_index.htm). These design standards are minimum accessibility standards for buildings and other structures. As of March 15, 2012, compliance with these regulations is required for any new construction and any alterations to existing facilities. The 2010 ADA Design Standards contain technical specifications for building and site elements common to parks and outdoor recreation areas, such as parking, accessible routes, ramps, drinking fountains, and restrooms. It also specifies how many accessibility features must be incorporated in each facility. Sponsors are required to provide accessible parking and accessible routes to connect users to any accessible recreation-related facilities that are subject to the 2010 ADA Design Standards. Additionally, design standards have been developed for specific recreation facilities, such as boating and fishing facilities, play areas and play surfaces, sports facilities, and swimming pools. The design standards can be accessed at <https://www.access-board.gov/guidelines-and-standards/recreation-facilities/guides>. Project sponsors are required to comply with these design standards and are encouraged to consult with a design professional for assistance to ensure ADA compliance. Additionally, the New England ADA Center has developed a series of ADA checklists that GMS is recommending as a resource to assist you in incorporating required design standards. The checklists include design standards for parking, access routes, restrooms, fishing and boating facilities, swimming facilities, play areas, etc., and can be found at <http://www.adachecklist.org/checklist.html>.

At the completion of your project, you will be required to submit as-built facility plans showing ADA compliance. Additionally, if you indicated in your project scope that you would be designing elements of your project to be universally accessible, you must show proof of universal design on your as-built plans. Universally designed recreation experiences have characteristics that make them easier to use by everyone, including people with a variety of different abilities and limitations. Designing for universal access means going beyond the minimum requirements of the ADA so that all people in the community or outside the community, including those with disabilities, may enjoy the recreation opportunities provided.

Outdoor Developed Areas and Trails:

Accessibility standards for outdoor developed areas (such as campgrounds, picnic areas, beaches, viewing areas, etc.) and trails have not yet been developed and incorporated into the ADA for non-federal entities, so the DOJ does not currently require local governments to make these amenities accessible. However, project sponsors are strongly encouraged to incorporate accessibility standards where feasible. To this end, GMS recommends project sponsors use the U.S. Access Board’s accessibility standards manual entitled, “Outdoor Developed Areas: A Summary of Accessibility Standards for Federal Outdoor Developed Areas” (<https://www.access-board.gov/guidelines-and-standards/recreation-facilities/outdoor-developed-areas/a-summary-of-accessibility-standards-for-federal-outdoor-developed-areas>). Although this manual was developed for federal facilities, it has applicability to local agencies attempting to develop accessible and sustainable outdoor recreation areas. Additionally, the [U.S. Forest Service](#) (USFS) has compiled a comprehensive manual that incorporates accessible design standards for outdoor settings

and trails that uses the Access Board's standards manual, but provides a more detailed explanation of each standard's technical requirements with illustrative graphics (<https://www.fs.usda.gov/sites/default/files/FSORAG-2013-Update.1.pdf>).

For projects that include the development of trails, it may not be practicable to implement accessibility standards. There are several conditions or exceptions that may preclude making a trail accessible. For instance, a trail's intended user group may make it impossible to design and construct a trail that is considered accessible – a mountain bike trail is a good example of this. Other conditions include the following:

- When existing terrain would make it impractical to design an ADA-compliant trail, such as a trail that is steeply sloped and would require extensive cuts or fill that would be difficult to construct and maintain or would be difficult to prevent erosion and other drainage issues from occurring.
- When prevailing construction practices would prohibit the ability to construct an ADA-compliant trail. For instance, an area may only allow the use of hand tools for trail construction because of resource concerns or policy prohibitions (such as in a state-designated wild area), which would make the construction of an accessible trail virtually impossible.
- When constructing an accessible trail would fundamentally alter the setting or purpose of the area. For example, primitive trails in natural settings with little to no development or trails intended to provide a rugged experience would not be capable of being made accessible.
- When federal, state or local laws would prevent the construction activities required to make a trail accessible, because of impacts to a resource protected under the Endangered Species, National Historic Preservation, Wilderness, or National Environmental Policy acts or other federal, state or local laws protecting significant resources.

Other Power-Driven Mobility Devices (OPDMD):

In March 2011, the Department of Justice issued regulations regarding ADA and the use of Other Power-Driven Mobility Devices (OPDMD) on trails open to the public. These regulations cover trails managed by state and local governments. The regulations distinguish between wheelchairs and OPDMDs. A wheelchair is a device purposely designed for use by a person with a mobility-impairment. An OPDMD, on the other hand, is a device not expressly designed for, but can be used by, a person with a mobility-impairment. OPDMDs are any devices or vehicles powered by batteries, fuel or other engines, that can be used by a person with a mobility-impairment for the purpose of locomotion. This includes golf carts, Segways®, ATVs, etc., without regard to size, width, weight, or horsepower.

A person who has a mobility impairment may use an OPDMD on public trails UNLESS a prior assessment of that route or area has determined the use of the specific class of OPDMD the person has requested to use cannot be operated in that location:

- without creating a substantial risk of serious harm to the immediate environment, or natural or cultural resources; or,
- because it poses a safety risk to users; or,
- because it poses a conflict with federal land management laws and regulations.

The assessment must demonstrate a thorough review of the following five assessment factors:

- the type, size, weight, dimensions and speed of the class of device;
- the facility's volume of pedestrian traffic;
- the facility's design and operational characteristics;
- whether legitimate safety requirements can be established to permit the safe operation of that specific class of OPDMD at that facility;
- and, as outlined above, whether the use of the OPDMD creates a substantial risk of serious harm to the immediate environment or natural or cultural resources or poses a conflict with federal land management laws and regulations.

If, after completing an assessment, a trail manager determines that there are trails that cannot accommodate the use of certain types of OPDMDs (or any at all) because of the risk factors described above, the managing entity will then need to draft a written policy that establishes adequate reasons for banning or limiting OPDMD use based on the above five assessment factors. The public will also need to be informed, in advance, of the OPDMD policy. These requirements relate in general to existing trails open to public use but, more specifically, they also relate to new trail projects. This means that, in order to comply with the OPDMD regulations, project sponsors using LWCF funds for trail projects will need to complete an assessment of the new trail to determine if it can accommodate OPDMDs and, if their use must be restricted, draft an OPDMD policy and demonstrate that the public has been informed of the policy. There are no specific rules for informing the public, so posting the policy to the project sponsor's website or Facebook page, or posting information at the trailhead, is considered sufficient demonstration. A screenshot of the website or Facebook page, a photo of the information posted at the trailhead, or some other proof that the public has been informed will need to be submitted to GMS, along with a copy of the assessment and the OPDMD policy, when you submit your project closeout documentation.

American Trails has provided a very comprehensive webpage that addresses questions regarding the interpretation of the OPDMD regulations (<https://www.americantrails.org/resources/q-a-on-wheelchairs-and-other-power-driven-mobility-devices-ruling>). They have also compiled a list of state, local and private organizations that have completed assessments and drafted OPDMD policies, and have provided links to those policies at <https://www.americantrails.org/resources/analysis-of-policies-addressing-trail-accessibility-rule-on-power-driven-mobility-devices>. These resources may be helpful to you when completing your trail assessment and drafting an OPDMD policy (where necessary) but it's important that you don't just adopt another organization's OPDMD policy without evaluating and documenting the five assessment factors outlined above. A written policy alone, without a supporting assessment, will not meet the Department of Justice's requirements. To read the DOJ ruling related to state and local governments (28 CFR § 35.137), see https://www.ada.gov/regs2010/titleII_2010/titleII_2010_withbold.htm. The DOJ has also provided an easy-to-understand summary of the OPDMD ruling and how to implement it at <https://www.ada.gov/resources/opdmds/>.

SECTION IV. REIMBURSEMENT AND REPORTING REQUIREMENTS

This section describes the process for submitting quarterly status reports; funding reimbursement requests, including required cost documentation and time accounting records; and requesting project amendments, such as changes in project scope or time extensions.

Quarterly Reports

After you've begun developing your project, you will be expected to keep GMS apprised of the status of your project through quarterly reports. The reports need to be submitted each quarter until the project is complete, using the Quarterly Report Form in Appendix F. The form has also been provided as a fillable PDF that can be downloaded from <https://www.mostateparks.com/page/61215/land-and-water-conservation-fund-lwcf-grants>. Quarters are January-March, April-June, July-September and October-December of each calendar year. Submit your quarterly report by the end of the month following each quarter; see the below table for an example. Reports should be emailed to the contact information provided on page 2 of this guide. It is recommended that you establish some form of reminder system to alert you when the reports are due. GMS may send you a friendly reminder if your quarterly report hasn't been submitted. Reimbursements may not be processed if quarterly reports are not submitted as required.

Quarterly Reports Schedule	
Quarter	Due Date
January – March	April 30
April – June	July 31
July – September	October 31
October - December	January 31

Annual Report

The NPS requires an annual report that covers activities during the federal fiscal year be submitted on all open projects. Project sponsors must email an annual report to GMS, who will then forward the information to the NPS. Your annual report is due each year on October 31st and should cover all activities of the project from October 1st of the previous year through September 30th of current year. If you receive a federal award in the middle of the federal fiscal year, an annual report is still due by October 31st and should cover all activities of the project from the project period start date through September 30th. A copy of the Annual Report Form is found in Appendix F, but GMS encourages you to use and email the fillable PDF version of the form that can be downloaded from <https://www.mostateparks.com/page/61215/land-and-water-conservation-fund-lwcf-grants>. The form asks you to summarize work completed during the federal fiscal year, identify work yet to be completed, expected completion date, and if the project is on-track or if an extension or amendment may be needed. GMS will send you a reminder if your annual report hasn't been submitted. **Note: you will have two reports due on October 31 of each year, the July-September Quarterly Report and the Annual Report.**

Amendment Requests

In unusual circumstances, you may find that you need to amend an element of your project agreement. Amendments to your project agreement must be submitted at least six months prior to the termination date of the grant and will require prior GMS approval and, in some cases, may require NPS approval to ensure your project's eligibility. A significant change in project scope may also require completing a new environmental review. The process for requesting amendments is outlined below.

Time Extensions:

Should you be unable to complete your project by the end date of your project period because of extenuating or unusual circumstances beyond your control, you may request a time extension using the Extension Request in Appendix F. A fillable PDF request form is also available on the [LWCF website](#). Time extension requests MUST be made at least six months before your original project period expires to ensure funding remains available for your project. GMS will require a revised schedule for completing key milestones and an assurance that the project is still viable. The form should be emailed to mpsgrants@dnr.mo.gov.

Change in Project Scope:

Proposed changes to the project scope must be made in writing to GMS through email. GMS will in turn coordinate with NPS staff for their approval to ensure that the project eligibility remains valid. The project must halt until NPS has approved the scope of work change and a NTP with new scope is given. Include an explanation for why you cannot complete the project as originally approved as well as a justification of the proposed change. Approved project scopes may change the amount of grant

reimbursement you receive. You must also provide documentation that the change in project scope does not conflict with the project scope describe in the Environmental Review Section of the original application. If the change is outside of what was cleared during the Environmental Review or impacts resources previously not impacted, then a reevaluation is needed and NPS will need to coordinate a new Environmental Review.

Change in Project Budget:

Often when your project scope changes, so will your project budget table. You can move up to 10% of your grant award between budget categories without GMS approval. Moving more than 10% of your grant award between budget categories requires GMS and NPS approval and an amended project agreement. If you wish to move more than 10% of the grant funds in your budget, submit a request in writing to the GMS office (again, requests should be emailed). Include the proposed new budget breakdown. Adding new budget categories constitutes a change in project scope and requires GMS and NPS approval as well as an amended project agreement and possible new environmental review.

Per the 2025 Open Project Selection Process a budget amendment may be approved in an amount not to exceed 25% of the original agreement amount and only when the increased costs are associated with project components approved in the original project scope. Requests for increased funding greater than 25% of the original request for resulting from a change in the project scope must undergo competition through the Open Project Selection Process during the following year's grant round. To request a budget amendment of no more than 25%, send a letter to the GMS Office that includes the total cost of the request and the reasons for the request. Letters should be emailed to mspgrants@dnr.mo.gov.

Project Termination

In extreme circumstances, you may determine that your organization will be unable to complete your project and will need to cancel the project. Your project must be withdrawn prior to any reimbursement of grant funds. Once a partial reimbursement has been made, the project can only be withdrawn with the approval of NPS. To withdraw a project, submit a written request to GMS.

Additionally, NPS may terminate a project at any time before the date of completion, whenever it is determined the project sponsor has failed to comply with the conditions of the grant.

Reimbursement Requests

Reimbursement requests may be submitted at any time during the project as long as the project is in compliance with the required provisions outlined in this guide. You are encouraged to submit reimbursement quarterly or has often as needed to keep the project viable. In order to ensure that projects do not become inactive, project sponsors are required to submit at least one reimbursement request annually. Reimbursement requests should be emailed to mpsgrants@dnr.mo.gov. Reimbursement requests must include the following:

- **Reimbursement Statement**, provided in Appendix F and also a fillable PDF online at <https://www.mostateparks.com/page/61215/land-and-water-conservation-fund-lwcf-grants>. The Reimbursement Statement is the signed statement from the project sponsor formally requesting grant reimbursement. For each Reimbursement Statement submitted, indicate whether this is the first billing, second billing, or third and so on, under "Billing Number" at the top of the form. Also indicate if this is a "partial" or "final" reimbursement, under "Billing Status." The billing dates should cover the time period that all activities are covered within the supporting documentation. Billing periods cannot overlap with previous or subsequent billing periods, so pay close attention that dates on invoices, receipts, etc., that they fall within the current billing period. The total cost for your project this billing period must agree with the total of all invoices, labor, equipment, in-kind contributions and donations shown on the Reimbursement Log form. The matching share percentage from your Financial Assistance Agreement should be used to calculate the amount requested for reimbursement.
- **Reimbursement Log**, provided in Appendix F and also a fillable PDF online at <https://www.mostateparks.com/page/61215/land-and-water-conservation-fund-lwcf-grants>. The Reimbursement Log documents the costs of your project and should reflect the list of eligible costs indicated in your budget table. Each item listed on the log must be supported by the appropriate documentation, as outlined in the Cost Documentation section below, and must be dated within the billing period identified on the Reimbursement Statement. The log should also include all match (in-house labor, equipment use or donations received) that was done within the billing period. You must also include a copy of any NTPs issued by GMS that are relevant to the costs included in the log, such as the NTP for contract compliance and the NTP for real property acquisition, as necessary.
- **Individual and Volunteer Time Record**, provided in Appendix F and also a fillable PDF online at the address above. Use the Time Record to document the hourly rate of all force account (in-house) employees and all volunteers working on the project. See the Cost Documentation section below for further details.

- **Equipment Use Log**, also provided in Appendix F and also a fillable PDF online at the address above. The Equipment Use Log documents the cost of in-house equipment usage and, when appropriate, the cost of using loaned equipment, as outlined in the Cost Documentation section below.

Cost Documentation

Only eligible costs will be reimbursed or allowed to be used as the sponsor's match. Eligible costs are those that relate directly to your project scope, were specified in your project budget table and narrative, and were incurred within the project period identified on your Financial Assistance Agreement (except in the instance of eligible pre-award planning costs).

Documentation of Pre-Award Planning Costs:

It is recognized that some costs may be incurred as part of proposal development before a proposed project can be submitted for approval. For development projects, the costs of site investigation and selection, site planning, feasibility studies, preliminary design, environmental review, preparation of cost estimates, construction drawings and specifications, and similar items necessary for project preparation are eligible for reimbursement, if they were incurred within eighteen months prior to project approval and if they were included in your budget table and budget narrative and approved by NPS. Similar costs may be allowable for acquisition proposals except those relating to appraisals, surveys, and other incidental costs to the purchaser that are precluded by the LWCF Act. Only pre-award costs listed in the federal award and the Financial Assistance Agreement are eligible for reimbursement. If submitting a reimbursement request for pre-award planning costs, make sure that all invoices, receipts, etc., are dated within the timeframe listed in the federal award. Pre-award costs must be included on the first reimbursement and that reimbursement must be completed within the first federal fiscal year of the award. Indicate in the "Comments" section of the Reimbursement Statement that these are pre-award planning costs. Consult with GMS prior to submitting to ensure eligibility of costs.

Documentation of Contract Labor:

When submitting invoices to the project sponsor for completed work, contractors on projects subject to state prevailing wage laws must also include a certified copy of their employee payroll and a signed Statement of Compliance indicating that the payrolls are correct and complete, and that each employee has been paid the prevailing wage rate for the work performed. It is the responsibility of the project sponsor to confirm that prevailing wage was paid based off the annual wage order in the bid packet. For more information about Missouri prevailing wage requirements, rates and how to complete the Contractors Payroll Form (<https://labor.mo.gov/media/pdf/ls-57-ai>, <https://labor.mo.gov/media/pdf/ls-57-3-ai>), visit the Missouri Department of Labor and Industrial Relations prevailing wage webpage at <http://labor.mo.gov/DLS/PrevailingWage/pwContractors>.

Documentation of Force Account Labor and In-House Equipment Usage:

This type of cost involves the use of your organization's paid work crews (on your payroll) and/or equipment in the completion of your project. Use the Individual and Volunteer Time Record for each employee who works on an aspect of the project. Indicate the employee's hourly rate at the top of the form. The description of work must be tied directly to the project's scope. Both the employee and their supervisor must sign the Individual and Volunteer Time Record. Copies of payroll checks must accompany the time record forms and reflect the dates indicated on the forms. Additionally, a copy of the employee's earnings record, which shows rate of pay, gross pay and deductions for the pay period, must be included. A computer payroll register may be substituted for the earnings record. Fringe benefit reports must indicate the percentage each fringe benefit is of gross salary.

Track equipment uses on the Equipment Use Log, using one form for each type of equipment used and noting the type of equipment, FEMA rate 4-digit cost code, hours of use, and hourly rate. The Equipment Use Log must be signed by the equipment operator and their supervisor. Use the current Federal Emergency Management Agency's (FEMA) Schedule of Equipment Rates to determine the cost of operating various pieces of mechanized equipment (<https://www.fema.gov/schedule-equipment-rates>). Occasionally, equipment used in the construction of a facility will be loaned to the project sponsor. The sponsor may claim the value of the equipment use as donated contribution to the sponsor's share of project costs. Use the Equipment Use Log as you would for in-kind equipment usage and, in place of the employee signature, have the volunteer sign instead. The project manager supervisor must sign as well. Use the current FEMA's Schedule of Equipment Rates to evaluate the cost of operating the piece of equipment.

Documentation of Volunteer Services:

The value of volunteer labor can also be used for the project sponsor's match. A volunteer's donated time should be valued at the current minimum wage rate per hour, unless the person is professionally skilled in the work being performed on the

project. When this is the case, the wage rate this individual is normally paid for performing this service may be used. Use the Individual and Volunteer Time Record for each volunteer who works on an aspect of the project. The description of work must be tied directly to the project's scope. Both the volunteer and the project manager must sign the Individual and Volunteer Time Record.

Documentation of Purchase of Materials or Supplies:

Follow the contracting requirements outlined in Section III, as applicable. Use the Reimbursement Log to record any materials or supplies you purchased as part of the project. Submit supporting documentation with the log, which includes copies of invoices, copies of receipts, and copies of proof of payment (such as the front and back of the cancelled checks from the bank). Ensure all copies of invoices and receipts are legible. Invoices should include the project number assigned to your project, as indicated on your Financial Assistance Agreement. Ensure that any checks written to pay invoices and receipts are from the project sponsor's bank account.

The value of donated supplies, materials and equipment that are permanently acquired should be reasonable and not exceed the current market prices at the time they are purchased for the project. For donated funds, materials or supplies, include a letter from the donor indicating what was donated and the amount or value of the donation. Use the Reimbursement Log to record donated contributions of supplies and materials and provide the fair market value by listing the comparable prices from other vendors or list the amount paid by the donor. If possible, request the donor to provide you a copy of any invoice or receipt for purchased materials or supplies, which should be included with your Reimbursement Log. If your project includes the value of a land donation, the steps you followed in Section II will have provided you with an appraisal valuation, a copy of which you will have already submitted to GMS. Document the appraised value of the real property on the Reimbursement Log.

Documentation of Real Property Acquisition:

Follow the Uniform Act requirements outlined in Section II, as applicable. Upon completion of the acquisition and the subsequent transfer of ownership, submit the following documentation along with the Reimbursement Log:

- Evidence of title
- Title insurance or an attorney's opinion of title, vested in the name of the project sponsor
- Copy of cancelled check showing payment to the landowner
- Copies of invoices for the appraisal and appraisal review
- Copies of cancelled checks showing payment for the appraisal and appraisal review

Final Reimbursement Request

Your final reimbursement request should be submitted within **60 days** after project completion or following the end date of the project period indicated on your Financial Assistance Agreement, whichever comes first. The final reimbursement request should include the Reimbursement Statement, the Reimbursement Log, the Individual and Volunteer Time Record form, the Equipment Use Log as appropriate, and all supporting cost documentation as outlined above. All pledged donations must have been received prior to submitting the final reimbursement request. Invoices must be dated prior to the project period end date and paid for within 30 days after the project end date. Additionally, a Final Inspection Request and a Project Closeout Packet must accompany your final reimbursement request. A copy of the Final Reimbursement Request is provided in Appendix F and detailed instructions for completing it and compiling the Project Closeout Packet are included in Section V. Final reimbursement (at least 25% of the federal award) cannot be disbursed until all of the closeout paperwork has been completed and approved by GMS.

SECTION V. PROJECT CLOSEOUT

Project Completion

The date of completion is the date when all work in a project is completed, or the date the project expires, whichever comes first. The project sponsor should submit the final reimbursement request, final inspection request and all required project close-out documents within **60 days** after the date of completion (see the Project Closeout Packet section below). GMS will conduct a final inspection of the project site, using the as-built plans submitted by the project sponsor, the original project scope, and any subsequent amendments as aids in determining project compliance.

LWCF Acknowledgement Sign

Once the project is complete, a sign acknowledging the Land and Water Conservation Fund program must be posted at the project site and should be placed at the entrance to the project. An acknowledgement sign must be maintained at the project site in perpetuity and be replaced when damaged from age or vandalism. For your convenience, a LWCF sign will be provided by GMS at the time of the final inspection or ribbon cutting ceremony. A photo of the hung sign must be included in the Project Closeout Packet.

Project Closeout Packet

Documents to be submitted as part of your project closeout packet include the following. Use the Project Closeout Documents Checklist in Appendix G to ensure that you've submitted all required documentation. GMS must receive your project closeout packet within 60 days after the date of completion, to ensure time to schedule an inspection, resolve any outstanding issues and process your final reimbursement request.

- **Final Reimbursement Request.** Use the Reimbursement Statement form provided in Appendix F (or the electronic form at <https://www.mostateparks.com/page/61215/land-and-water-conservation-fund-lwcf-grants>). Under "Billing Status," check the box marked "Final." Include a Reimbursement Log, relevant time and equipment use records, and all pertinent cost documentation, as outlined in Section IV.
- **Final Inspection Request form.** A copy of the Final Inspection Request form is provided in Appendix G. On the form, provide the date of the ribbon cutting ceremony or two potential dates when you or someone from your organization who is familiar with the project could meet with GMS for a final inspection. It's important that the proposed dates fall within a 30-day window following the submittal of your project closeout packet. This will give GMS time to contact you to schedule an inspection and you time to resolve any outstanding issues noted by GMS during the inspection. Additionally, it will allow GMS time to process your final reimbursement.
- **LWCF Boundary Map.** You must submit an updated signed and dated project boundary map which clearly delineates the area to be protected under the LWCF Act, if needed. In most cases, there may be no change from the LWCF Boundary map submitted with the application other than showing the project as complete and labeling it with the completion date. **Land identified within the LWCF boundary must be retained in perpetuity for public outdoor recreation use.** Generally, this area includes the entire park or project area where recreation is being developed, except in unusual cases where it can be shown that a facility within an area is clearly self-sustaining (and accessible) without reliance on the surrounding area (subject to NPS approval). The project area must be readily accessible through a public corridor (i.e. parking lot, street, permanent public easement, etc.). **Maps should be no bigger than 11" x 17".** Maps may be drawn on a satellite or aerial image. **Full-color images are preferred.** The map must include the following information. For your convenience, a LWCF Boundary Map Checklist has been provided in Appendix G. Maps that do not include all of the required information will be returned to the project sponsor for necessary revision.
 - Entitle the map, "LWCF Boundary Map."
 - Signature and date on the map by the project sponsor's authorized signatory.
 - Official Park or site name.
 - LWCF Project Number
 - Date of map preparation.
 - Clearly indicate dimensions of the project area with measurements in feet on each side to effectively illustrate the area that will be under LWCF Act protection.
 - The map needs to indicate entrance/access point(s) to project area and to park or site, if project is part of a larger area.
 - If applicable, identify any pre-existing uses (buildings/non-outdoor recreation facilities) that do not support outdoor recreation and that should be excluded from LWCF Act protection. Include the square footage of the non-supporting facility or area footprint. Subtract this square footage from the total square feet of the area to be protected under the LWCF Act.



- If applicable, indicate any outstanding rights and interest in the area, including easements, deed/lease restrictions, reversionary interests, rights-of-way, etc.
 - If applicable, include any area or resource upon which the project is dependent, even if the area/resource was not included in the project scope and did not receive LWCF money. An example of this would be an existing parking lot that provides the sole access to a picnic area that was developed with a LWCF grant. The parking lot would need to be included in the LWCF Boundary, and its footprint added to the total square footage.
 - Include a north arrow.
 - If applicable, indicate any areas under lease with term of at least 25 years remaining on the lease.
 - Indicate adjacent street names, bodies of water and any other features that could be used as identifying landmarks.
 - Convert the total square footage to acreage and indicate total acreage within the LWCF boundary.
 - Indicate assessor's parcel number(s).
 - Provide the latitude and longitude of the project entrance.
 - For projects within an already established LWCF area, indicate the location of the development/renovation project in relation to existing facilities.
- **As-built facility plans.** As-built plans showing elevations and floor plans of all structures and facilities must be submitted. The plans must also indicate the accessibility standards that were incorporated into the project.
 - **OPDMD Assessment and Written Policy,** if required as outlined in Section III.
 - **Post-Construction Certification.** A copy of the signed Post Construction Certificate (found in the Appendix G) must accompany the final reimbursement for development projects. This form is to be completed by the supervising architect or engineer on the project. If the project did not involve a contract architect or engineer, then the project sponsor's architect, engineer or project manager should inspect the project and sign the Post Construction Certification.
 - **Control and tenure documentation.** If not already submitted to GMS, copies of property titles, leases, easements, or appropriate documents must be submitted as part of a project's documentation. This includes copies of deeds or easements of real property acquired with LWCF funds or real property donated as part of this project.
 - **Proof of flood insurance,** if required as outlined in Section III.
 - **Declaration of Deed Restriction.** A copy of the recorded declaration of deed restriction must be submitted. Before the declaration of deed restriction is recorded, a draft of the declaration including the legal description of the LWCF boundary and signed copy of the LWCF map must be send to GMS for approval. Once the declaration is approved, GMS will issue a notice to proceed with recording the declaration of deed restriction and LWCF Boundary Map. A sample declaration can be located in Appendix G.

Project Dedication

Project sponsors are encouraged to invite GMS to any scheduled events promoting the completion of the project, such as dedications or ribbon-cutting ceremonies. GMS may use photos of the completed project in print or electronic promotional materials publicizing the LWCF program.

Remedies for Noncompliance

Failure to comply may result in termination of the subaward or subcontract, or such other remedy as MoDNR deems appropriate to the circumstance, which may include, but is not limited to, action to withhold further payments, disallow all or part of the cost of the activity, disqualify the subrecipient or subrecipient's contractor from future bidding as non-responsible, or repayment of previously disbursed amounts. If there is a breach of the perpetual stewardship requirement, the remedy may require a conversion pursuant to the Land and Water Conservation Fund Act and regulations [36 CFR Part 59](#).

SECTION VI. POST-COMPLETION REQUIREMENTS

Record Retention

For audit purposes, the project sponsor will need to retain financial records, supporting documents, environmental clearances and all other records pertinent to the LWCF grant for a period of five years starting from the date of submission of the final payment request, per Section B of Appendix B (MoDNR Federal Financial Assistance Agreements General Terms and Conditions). Refer to Section III for a list of documents you are required to maintain in your project file.

Long-Term Stewardship Responsibilities

Property developed with federal LWCF assistance must be properly operated and maintained consistent with [43 CFR Part 17](#) (anti-discrimination provisions) for general public use in perpetuity and requires the subrecipient to record an appropriate notice of record in the public property records of the jurisdiction where the land is located. The site should appear attractive and inviting to the public. Proper sanitation and sanitary facilities should be maintained in accordance with applicable federal, state and local standards. The site should be kept safe for public use. Fire prevention, lifeguard, and similar activities must be maintained for proper public safety. Buildings, roads, and other improvements should be kept in reasonable repair throughout their lifetime to prevent undue deterioration and to encourage public use. Evidence of vandalism should be repaired as quickly as possible.

Post-completion inspections:

In order to determine whether properties acquired or developed with LWCF assistance are being retained and used for outdoor recreation purposes in accordance with the Financial Assistance Agreement and other applicable program requirements, GMS will conduct a post-completion inspection within five years after final billing and at least once every five years thereafter. Copies of the inspection reports will be sent to the project sponsor. The purpose of these inspections is to ensure that the site is being used for the purposes intended; the site is attractive and properly maintained; and the area is accessible and open to the general public. Discovery of compliance problems such as park closures and non-recreation or private uses occurring within the LWCF boundary will require enacting the conversion process as outlined further in this section. Project sponsors will also be asked to complete a self-certification inspection once every five year and submit it to GMS for the public record.

Public access:

The facility should be kept open for general public use at reasonable hours and times of the year according to the type of area or facility. The project must be open to entry and use by all persons regardless of race, religion, color, sex, national origin, age, disability, or place of residence. The site cannot be restricted for use only by community or county residents. Project sponsors may impose reasonable limits on the type and extent of use of areas and facilities developed with LWCF funds when such a limitation is necessary for maintenance or preservation. Thus, limitations may be imposed on the numbers of person using an area or facility or the type of users, such as “hunters only” or “hikers only.” All limitations shall be in accordance with the Financial Assistance Agreement and amendments.

User fees:

If fees are charged to use federally funded sites or facilities, the project sponsor must submit a complete schedule of all charges to be assessed for those using the facilities to GMS. The fee schedule must allow for broad public participation, perhaps by including free days or reduced rate days, if feasible. If the project was partially funded by local tax revenues, a higher user fee may be charged to out-of-city or out-of-county residents. Fees charged to nonresidents cannot exceed twice the amount charged to residents. Where there is no charge for residents, but a fee is charged to nonresidents, nonresident fees cannot exceed fees charged for residents at comparable state or local public facilities. Reservations, membership or annual permit systems available to residents must also be available to nonresidents and the period of availability must be the same for both. Project sponsors are prohibited from providing residents the option of purchasing annual or daily permits while at the same time restricting nonresidents to the purchase of annual permits only ([36 CFR 59 \(c\)](#)).

Land management practices:

Land management practices such as the rental of structures, the sale of timber and the lease or rental of land occurring during or after the project period must be compatible with the outdoor recreational use of the areas as described in the project scope. Any practice that alters the use or purpose of the area is prohibited. Extraction of oil and gas from LWCF-assisted projects involving the purchase of subsurface rights is allowable and will not constitute a conversion provided the extraction process does not reduce the recreation opportunities at the site, nor detract from the recreation experiences. Income derived from mineral extraction and its uses must be approved by the NPS through a formal agreement with MoDNR prior to the onset of extraction activities.

Leases and concession operations:

A project sponsor may provide for the operation of a LWCF-assisted area by leasing the area/facility to a private organization or individual or by entering into a concession agreement with an operator to provide a public outdoor recreation opportunity at the site. All lease documents and concession agreements for the operation of LWCF-assisted sites by private organizations or individuals must address the following:

- In order to protect the public interest, the project sponsor must have a clear ability to periodically review the performance of the lessee/concessioner and terminate the lease/agreement if its terms and the provisions of the grant agreement, including standards of maintenance, public use, and accessibility, are not met.
- The lease/agreement document should clearly indicate that the leased/concession area is to be operated by the lessee/concessionaire for public outdoor recreation purposes in compliance with provisions of the Land and Water Conservation Fund Act and implementing guidelines (36 CFR 59). As such, the document should require the area be identified as publicly owned and operated as a public outdoor recreation facility in all signs, literature and advertising and is operated by a lessee/concessioner as identified in the public information to eliminate the perception that the area is private.
- The lease/agreement document should require all fees charged by the lessee/concessionaire be competitive with similar private facilities.
- The lease/agreement document should make clear that compliance with all Civil Rights and accessibility legislation (e.g., Title VI of Civil Rights Act, Section 504 of Rehabilitation Act, and Americans with Disabilities Act) is required, and compliance will be indicated by signs posted in visible public areas, statements in public information brochures, etc.

Earned income:

Income earned by the project sponsor after the project period, including from recreational use fees, leases, concession operations and land management practices, may be disposed of at the sponsor's discretion. However, the sponsor is encouraged to use such income to further recreation objectives related to the facility when state and local laws allow.

Underground utility easements:

Underground utility easements within a LWCF area are allowed as long as the easement site is restored to its pre-existing condition to ensure the continuation of public outdoor recreational use of the easement area within 12 months after the ground within the easement area is disturbed. If restoration exceeds the 12-month period, or the easement activities result in permanent above-ground changes, NPS must be consulted to determine if the changes will trigger a conversion. If present or future outdoor recreation opportunities will be impacted in the easement area or in the remainder of the LWCF Boundary area, a conversion will be triggered. Unless there is a pre-existing easement, the legal arrangement providing the rights for the utility must be a license or other limited use agreement. Arrangements that require granting property rights such as an easement will constitute a conversion.

Cellular towers:

Cellular towers are considered permanent non-recreational facilities that do not add recreational value to a LWCF site. Placement of a cellular tower in a LWCF-assisted area would trigger a conversion.

Overhead utility lines:

Overhead utility lines are a major detraction from the natural quality of many outdoor recreation areas and can pose a safety hazard for recreational users, so must be eliminated where possible. Project sponsors are expected to take all reasonable steps to ensure the burial, screening, or relocation of existing overhead lines at development or acquisition projects where such lines intrude upon the site's character and ensure that all new electric wires under 15 KV and telephone wires are placed underground where technically and economically feasible. Burying overhead lines is an eligible cost for LWCF assistance.

Commercial signage:

Commercial signs are only allowable within LWCF boundaries when the advertising is attached to allowable park structures such as benches, fencing, walls, and buildings, and are not inconsistent with the park setting and/or the built environment in which it is located (e.g., athletic fields). Signs may face either outside or inside the park. Commercial advertising in the form of a stand-alone structure such as a billboard that creates a footprint in the park, or commercial signage permanently affixed to a natural feature within the LWCF boundary area, is a conversion regardless of which direction it faces.

Public facilities:

Public facility requests will only be approved if the public facility clearly results in a net gain in outdoor recreation benefits or enhances the outdoor recreation use of the entire park, and the facility is compatible with and significantly supportive of the outdoor recreation resources and opportunities of the LWCF boundary area. Requests to construct public facilities will be considered when it's shown that:

- Uses of the facility will be compatible with and significantly supportive of outdoor recreation resources and uses at the rest of the site and recreation use remains the overall primary function of the site.
- The proposed public facility will include a recreation component and will encourage outdoor recreation use of the remaining LWCF boundary area.
- All design and location alternatives have been adequately considered, documented and rejected on a sound basis.
- The proposed structure is compatible and significantly supportive of the outdoor recreation resources of the site, whether existing or planned. The park's outdoor recreation use must continue to be greater than that expected for any indoor uses, unless the site is a single use facility, such as a swimming pool building, which virtually occupies the entire site.
- Potential and future benefits to the total park's outdoor recreation utility must be identified in the proposal. Any costs or detriments should be documented, and a net recreation benefit must result.
- The proposed facility must be under the control and tenure of the public agency that sponsors and administers the original park area.

Examples of uses which would not ordinarily be approved include, but are not limited to, a community recreation center which takes up all or most of a small park site; clinics; police stations; restaurants catering primarily to the general public; fire stations; professional sports facilities or commercial resort or other facilities which are not accessible to the general public, require memberships, or have the effect of excluding elements of the public because of high user fees, or which include office, residential or elaborate lodging facilities.

Restaurant-type establishments with indoor dining/seating that cater primarily to the outdoor recreating public must be reviewed under this public facility policy. Other Park food service operations such as snack bars, carry-out food service, and concession stands with outdoor dining including pavilions and protected patios are allowable without further NPS approval if the primary purpose is to serve the outdoor recreating public. Consult GMS for assistance with the process for requesting approval of public facilities.

Sheltered facilities:

Proposals to build sheltered facilities or to shelter existing facilities, such as an indoor pool or ice rink, within a LWCF boundary area may be allowable, provided they do not change the overall public outdoor recreation characteristics of the area and are significantly supportive of outdoor recreation. Such proposals must be reviewed and approved by NPS. Consult with GMS for assistance with this process.

Temporary non-conforming uses:

All requests for temporary uses for purposes that do not conform to the public outdoor recreation requirement must be submitted to and reviewed by GMS. GMS in turn will submit a formal request to NPS describing the temporary non-conforming use proposal. Continued use beyond six-months will not be considered temporary but will result in a conversion of use and will require the project sponsor to provide replacement property.

Significant change of use:

The LWCF Act requires project sponsors maintain the entire area defined in the Financial Assistance Agreement in some form of public outdoor recreation use. NPS approval must be obtained prior to any change from one eligible use to another when the proposed use would significantly contravene the original plans or intent for the area as described in the original project scope. NPS approval is not required for each facility use change unless the change is substantially different, such as a change from a swimming pool with substantial recreational development to a less intense area of limited development such as a passive park, or vice versa. Project sponsors are required to consult with GMS prior to initiating any such change. GMS will in turn notify NPS. NPS will expedite a determination of whether a formal review and approval process will be required. A primary NPS consideration in the review will be the consistency of the proposal with the SCORP. Changes to any use other than public outdoor recreation use constitute a conversion and will require NPS approval and the substitution of replacement land in accordance with the LWCF Act

Obsolete facilities:

Project sponsors are not required to continue operation of a particular recreation area or facility beyond its useful life. However, the LWCF Act requires project sponsors to maintain the entire area within the LWCF boundary in some form of public outdoor recreation use. The LWCF Act obligation cannot be discharged by declaring a facility obsolete. Notwithstanding neglect or inadequate maintenance on the part of the project sponsor, a recreation area or facility may be determined to be obsolete if:

- Reasonable maintenance and repairs are not sufficient to keep the recreation area or facility operating.
- Changing recreation needs dictate a change in the type of facilities provided.
- Park operating practices dictate a change in the type of facilities required.
- The recreation area or facility is destroyed by fire, natural disaster, or vandalism.

A facility may be considered obsolete, and its use may be discontinued or changed if the project sponsor provides a sound justification statement for determining obsolescence and GMS concurs with the change. However, NPS approval must be obtained prior to any change from one LWCF allowable use to another when the proposed use would significantly contravene the original plans for the area. LWCF assistance may be provided to renovate outdoor recreation facilities that have previously received LWCF assistance, if GMS determines the renovation is not required as a result of neglect or inadequate maintenance and the project sponsor provides documentation to that effect.

Conversions of Use

Any property acquired and/or developed with LWCF assistance cannot be wholly or partially converted to any purpose other than public outdoor recreation uses without the approval of NPS, per the LWCF Act. Project sponsors must consult early with GMS when a conversion is under consideration or has been discovered. GMS will in turn consult with NPS as early as possible in the conversion process for guidance and to sort out and discuss details of the conversion proposal to avoid mid-course corrections and unnecessary delays. A critical first step is for the sponsor, GMS and NPS to agree on the size of the LWCF boundary park land impacted by any non-recreation, non-public use, especially prior to any appraisal activity. Any previous LWCF Financial Assistance Agreements and actions must be identified and understood to determine the actual LWCF boundary.

Situations that may not trigger a conversion if NPS determines that certain criteria are met include:

- Underground utility easements that do not impact the recreational use of the park and are restored to their original surface condition.
- Proposals to construct public facilities, such as recreation centers and indoor pool buildings, within the LWCF boundary area where it can be shown there is a gain or increased benefit to the public outdoor recreational opportunity. These proposals must be reviewed by the NPS as a "public facility request."
- Proposals for "temporary non-conforming uses," which are temporary non-recreation activities of less than a six-month duration within the LWCF boundary area. These must be reviewed and approved by NPS prior to start, as outlined above.
- Proposals to build sheltered facilities or to shelter existing facilities within the LWCF boundary area provided they do not change the overall public outdoor recreation characteristics. Prior approval is required by NPS review, as outlined above.
- Proposals for changing the overall outdoor recreation use of the LWCF boundary area from that intended in the original LWCF Financial Assistance Agreement. These proposals must be reviewed by NPS as outlined above.

Situations that trigger a conversion include:

- Property interests that are conveyed for private use or non-public outdoor recreation uses.
- Non-outdoor recreation uses (public or private) that are made of the project area, or a portion thereof, including those occurring on pre-existing rights-of-way and easements, or by a lessor.
- Unallowable indoor facilities that are developed within the LWCF boundary area without NPS approval, such as unauthorized public facilities and sheltering of an outdoor facility.
- Public outdoor recreation use of property acquired or developed with LWCF assistance that is terminated.

The property to be converted will be required to be replaced with substitute property of at least equal fair market value as established by the appraisal process outlined in Section II. The property proposed for replacement must be of reasonably equivalent usefulness and location as that being converted. Depending on the situation, and at the discretion of NPS, the replacement property need not provide identical recreation experiences or be located at the same site, provided it is in a reasonably equivalent location. GMS can provide guidance on the evaluation process for determining an equivalent substitute. Consult with GMS immediately when considering a conversion, for assistance with the conversion process.

Discovering Unauthorized Conversions

When it is discovered that an LWCF Boundary area has been converted without NPS approval, a conversion proposal must be submitted to and reviewed by the NPS for approval. The project sponsor shall be put on notice by GMS it is ineligible for future grants until satisfactory steps have been taken towards resolution as determined by NPS. Typically, this entails review of the replacement property and development of recreation equivalency for public outdoor recreation.

XII. STANDARD TERMS AND CONDITIONS

1. DEPARTMENT OF INTERIOR STANDARD TERMS AND CONDITIONS, 2 CFR 200, 2 CFR 1402

Recipients must comply with all applicable federal statutes, regulations, executive orders (EOs), Office of Management and Budget (OMB) circulars. Any inconsistency or conflict in Standard Terms and Conditions, Program-Specific Terms and Conditions, and any Special Award Conditions of this Award will be resolved according to the following order of precedence: federal laws, Executive Orders, federal regulations, applicable notices published in the Federal Register, OMB circulars, NPS Standard Terms and Conditions, Program-Specific Terms and Conditions, and any Special Award Conditions.

DOI terms and regulatory requirements located at:

- <https://www.doi.gov/grants/doi-standard-terms-and-conditions>
- [eCFR :: 2 CFR Part 200 -- Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards](#)
- [eCFR :: 2 CFR Part 1402 -- Financial Assistance Interior Regulation, Supplementing the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards](#)

2. APPROVED INDIRECT RATE

Indirect costs must be charged consistently in accordance with the approved project budget, which is incorporated into this award as an attachment. In the case of a Master Cooperative agreement, indirect costs will be incorporated at the Task Agreement level. If the recipient has a Federally approved indirect rate, it is the responsibility of the Recipient to work with their cognizant agency in a timely manner to avoid the expiration of the Federally negotiated rate. If the Recipient has never had a Federally approved negotiated indirect rate, they may utilize a 15% minimus rate per 2 CFR 200.414. If the Federally negotiated rate changes during the period of performance, the newly approved rate must be implemented.

3. RESERVED

4. KEY OFFICIALS

- A. Communications - The recipient shall address any communication regarding this Agreement to the ATR/Program Officer with a copy to the Awarding/Grants Management Officer. Communications that relate solely to technical matters may be sent only to the ATR/Program Officer.
- B. Changes in Key Officials - Recipient may not make any permanent change in a key official without written notice to the other party reasonably in advance of the proposed change. The notice will include a justification with sufficient detail to permit evaluation of the impact of such a change on the scope of work specified

within this Agreement. Any permanent change in key officials will be made only by Agency Approval.

5. PRIOR APPROVAL

The Recipient shall obtain prior approval for budget and program revisions, in accordance with 2 CFR 200.308.

6. PROPERTY UTILIZATION

All tools, equipment, and facilities furnished by NPS will be on a loan basis. Tools, equipment, and facilities will be returned in the same condition received except for normal wear and tear in project use. Property management standards set forth in 2 CFR 200.310 through 200.316 apply to this Agreement. All provided items must be consistently tracked and accounted for by the recipient and NPS both when provided to the recipient and upon return.

7. MODIFICATION, REMEDIES FOR NONCOMPLIANCE, TERMINATION

- A. This Agreement may be modified at any time, prior to the expiration date, only by agreement executed by both parties. Modifications will be in writing and approved by the Financial Assistance Awarding Officer and the authorized representative of Recipient.
- B. Additional conditions may be imposed by NPS if it is determined that the Recipient is non-compliant to the terms and conditions of this agreement. Remedies for Noncompliance can be found in 2 CFR 200.339.
- C. This Agreement may be terminated consistent with applicable termination provisions for Agreements found in 2 CFR 200.340 through 200.343.

8. REPORTING OF MATTERS RELATED TO RECIPIENT INTEGRITY AND PERFORMANCE

A. General Reporting Requirement

- i. If the total value of your currently active grants, cooperative agreements, and procurement contracts from all Federal agencies exceeds \$10,000,000 for any period of time during the period of performance of this Federal award, then you, as the recipient, during that period of time must maintain the currency of information reported to the System for Award Management (SAM) that is made available in the designated integrity and performance system about civil, criminal, or administrative proceedings described in paragraph 2 of this award term and condition. This is a statutory requirement under section 872 of Public Law 110-417, as amended (41 U.S.C. 2313). As required by section 3010 of Public Law 111-212, all information posted in the designated integrity and performance

system on or after April 15, 2011, except past performance reviews required for Federal procurement contracts, will be publicly available.

B. Proceedings You Must Report

- i. Submit the information required about each proceeding that:
- ii. Is in connection with the award or performance of a grant, cooperative agreement, or procurement contract from the Federal Government.
- iii. Reached its final disposition during the most recent five-year period; and
- iv. Is one of the following:
 - a) A criminal proceeding that resulted in a conviction, as defined in paragraph 5 of this award term and condition; or
 - b) A civil proceeding that resulted in a finding of fault and liability and payment of a monetary fine, penalty, reimbursement, restitution, or damages of \$5,000 or more; or
 - c) An administrative proceeding, as defined in paragraph 5 of this award term and condition, that resulted in a finding of fault and liability and payment of either a monetary fine or penalty of \$5,000 or more; or reimbursement, restitution, or damages more than \$100,000; or
 - d) Any other criminal, civil, or administrative proceeding if:
 1. It could have led to an outcome described the award terms and conditions.
 2. It had a different disposition arrived at by consent or compromise with an acknowledgment of fault on your part; and
 3. The requirement in this award term and condition to disclose information about the proceeding does not conflict with applicable laws and regulations.

C. Reporting Procedures

Enter in the SAM Entity Management area the information that SAM requires about each proceeding described in the award terms and conditions. You do not need to submit the information a second time under assistance awards that you received if you already provided the information through SAM because you were required to do so under Federal procurement contracts that you were awarded.

D. Reporting Frequency

During any period when you are subject to the requirement in paragraph 1 of this award term and condition, you must report proceedings information through SAM for the most recent five-year period, either to report new information about any proceeding(s) that you have not reported previously or affirm that there is no new information to report. Recipients that have Federal contract, grant, and cooperative agreement awards with a cumulative total value greater than \$10,000,000 must disclose semiannually any information about the criminal, civil, and administrative proceedings.

E. Definitions

- i. For purposes of this award term and condition:

- a) Administrative proceeding means a non-judicial process that is adjudicatory in nature in order to make a determination of fault or liability (*e.g.*, Securities and Exchange Commission Administrative proceedings, Civilian Board of Contract Appeals proceedings, and Armed Services Board of Contract Appeals proceedings). This includes proceedings at the Federal and State level but only in connection with performance of a Federal contract or grant. It does not include audits, site visits, corrective plans, or inspection of deliverables.
- b) Conviction means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of *nolo contendere*.
- c) Total value of currently active grants, cooperative agreements, and procurement contracts includes—
 - 1. Only the Federal share of the funding under any Federal award with a recipient cost share; and
 - 2. The value of all expected funding increments under a Federal award and options, even if not yet exercised.

9. FUNDING USED FOR THE PURCHASE AND OPERATION OF UNMANNED AIRCRAFT SYSTEMS (UAS)

If Federal funding is provided to a State, local, tribal, or territorial government for the purchase or use of UAS for their operations, the recipient must have in place policies and procedures to safeguard individuals' privacy, civil rights, and civil liberties prior to expending such funds.

Per National Park Service Director Policy Memorandum 14-05, dated June 19, 2014, the launching, landing, and operating of unmanned aircraft, that is not under the control of the Federal government, on lands and waters administered by the National Park Service is prohibited unless approval is received from the Associate Director for such purposes as:

Scientific study, search and rescue operations, fire operations, and law enforcement.
 Administrative use includes the use of unmanned aircraft by:

- (i) NPS personnel as operators or crew;
- (ii) cooperators such as government agencies and universities that conduct unmanned aircraft operations for the NPS pursuant to a written agreement; and
- (iii) other entities, including commercial entities, conducting unmanned aircraft operations for the NPS, provided such entities follow all applicable FAA and Department of the Interior requirements.

10. PATENTS AND INVENTIONS (37 CFR 401)

Recipients of agreements which support experimental, developmental, or research work shall be subject to applicable regulations governing patents and inventions, including the government-wide regulations issued by the Department of Commerce at 37 CFR 401, Rights to Inventions Made by Non-profit Organizations and Small Business Firms Under

Government Grants, Contracts and Cooperative Agreements. These regulations do not apply to any agreement made primarily for educational purposes.

In accordance with 37 CFR 401.3(a), the provision at 37 CFR 401.14(a), with authorized modifications for the National Park Service, is hereby included in this agreement:

(a) Definitions

(1) *Invention* means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code, or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C. 2321 et seq.).

(2) *Subject invention* means any invention of the recipient conceived or first actually reduced to practice in the performance of work under this agreement, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) must also occur during the period of agreement performance.

(3) *Practical Application* means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or government regulations, available to the public on reasonable terms.

(4) *Made* when used in relation to any invention means the conception or first actual reduction to practice of such invention.

(5) *Small Business Firm* means a small business concern as defined at section 2 of Public Law. 85-536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this provision, the size standards for small business concerns involved in government procurement and subcontracting at 13 CFR 121.3-8 and 13 CFR 121.3-12, respectively, will be used.

(6) *Nonprofit Organization* means a university or other institution of higher education, or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c) and exempt from taxation under section 501(a) of the Internal Revenue Code (25 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

(b) Allocation of Principal Rights.

The Recipient may retain the entire right, title, and interest throughout the world to each subject invention subject to this provision and 35 U.S.C. 203. With respect to any subject

invention in which the Recipient retains title, the Federal government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

(c) Invention Disclosure, Election of Title and Filing of Patent Application by Recipient

(1) The Recipient will disclose each subject invention to the National Park Service within two months after the inventor discloses it in writing to Recipient personnel responsible for patent matters. The disclosure to the National Park Service shall be in the form of a written report and shall identify the agreement under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the National Park Service, the Recipient will promptly notify the National Park Service of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Recipient.

(2) The Recipient will elect in writing whether or not to retain title to any such invention by notifying the National Park Service within two years of disclosure to the National Park Service. However, in any case where publication, on sale or public use has initiated the one-year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened by the National Park Service to a date that is no more than 60 days prior to the end of the statutory period.

(3) The Recipient will file its initial patent application on a subject invention to which it elects to retain title within one year after election of title or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. The Recipient will file patent applications in additional countries or international patent offices within either ten months of the corresponding initial patent application or six months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

(4) Requests for extension of the time for disclosure, election, and filing under subparagraphs (1), (2), and (3) may, at the discretion of the National Park Service, be granted.

(d) Conditions When the Government May Obtain Title.

The Recipient will convey to the National Park Service, upon written request, title to any subject inventions

(1) If the Recipient fails to disclose or elect title to the subject invention within the times specified in (c), above, or elects not to retain title; provided that the National Park Service may only request title within 60 days after learning of the failure of the Recipient to disclose or elect within the specified times.

(2) In those countries in which the Recipient fails to file patent applications within the times specified in (c) above; provided, however, that if the Recipient has filed a patent application in a country after the times specified in (c) above, but prior to its receipt of the written request of the National Park Service, the Recipient shall continue to retain title in that country.

(3) In any country in which the Recipient decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding on, a patent on a subject invention.

(e) Minimum Rights to Recipient and Protection of the Recipient Right to File

(1) The Recipient will retain a nonexclusive royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the Recipient fails to disclose the invention within the times specified in (c), above. The Recipient's license extends to its domestic subsidiary and affiliates, if any, within the corporate structure of which the Recipient is a party and includes the right to grant sublicenses of the same scope to the extent the Recipient was legally obligated to do so at the time the agreement was awarded. The license is transferable only with the approval of the National Park Service except when transferred to the successor of that party of the Recipient's business to which the invention pertains.

(2) The Recipient's domestic license may be revoked or modified by the National Park Service to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 CFR part 404 and the National Park Service licensing regulations (if any). This license will not be revoked in that field of use or the geographical areas in which the Recipient has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the National Park Service to the extent the Recipient, its licensees, or the domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, the National Park Service will furnish the Recipient a written notice of its intention to revoke or modify the license, and the Recipient will be allowed thirty days (or such other time as may

be authorized by the National Park Service for good cause shown by the Recipient) after the notice to show cause why the license should not be revoked or modified. The Recipient has the right to appeal, in accordance with applicable regulations in 37 CFR part 404 and National Park Service regulations (if any) concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of the license.

(f) Recipient Action to Protect the Government's Interest

(1) The Recipient agrees to execute or to have executed and promptly deliver to the National Park Service all instruments necessary to

(i) establish or confirm the rights the Government has throughout the world in those subject inventions to which the Recipient elects to retain title, and

(ii) convey title to the National Park Service when requested under paragraph (d) above and to enable the government to obtain patent protection throughout the world in that subject invention.

(2) The Recipient agrees to require, by written agreement, its employees, other than clerical and non-technical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Recipient each subject invention made under agreement in order that the Recipient can comply with the disclosure provisions of paragraph (c), above, and to execute all papers necessary to file patent applications on subject inventions and to establish the government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by (c)(1), above. The Recipient shall instruct such employees through employee agreements or other suitable educational programs on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(3) The Recipient will notify the National Park Service of any decisions not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than thirty days before the expiration of the response period required by the relevant patent office.

(4) The Recipient agrees to include, within the specification of any United States patent applications and any patent issuing thereon covering a subject invention, the following statement, "This invention was made with government support under (identify the agreement) awarded by (identify the Federal agency). The government has certain rights in the invention."

(g) Subcontracts. The Recipient will include this provision, suitably modified to identify the parties, in all sub-agreements or subcontracts, regardless of tier, for experimental,

developmental or research work. The sub-recipient or subcontractor will retain all rights provided for the Recipient in this provision, and the Recipient will not, as part of the consideration for awarding the sub-agreement or subcontract, obtain rights in the sub-recipient's or subcontractor's subject inventions.

(h) Reporting on Utilization of Subject Inventions. The Recipient agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Recipient or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Recipient, and such other data and information as the National Park Service may reasonably specify. The Recipient also agrees to provide additional reports as may be requested by the National Park Service in connection with any march-in proceeding undertaken by the National Park Service in accordance with paragraph (j) of this provision. As required by 35 U.S.C. 202(c)(5), the National Park Service agrees it will not disclose such information to persons outside the government without permission of the Recipient.

(i) Preference for United States Industry. Notwithstanding any other part of this provision, the Recipient agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject inventions in the United States unless such person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by the National Park Service upon a showing by the Recipient or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(j) March-in Rights. The Recipient agrees that with respect to any subject invention in which it has acquired title, the National Park Service has the right in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of the National Park Service to require the Recipient, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the Recipient, assignee, or exclusive licensee refuses such a request the National Park Service has the right to grant such a license itself if the National Park Service determines that:

(1) Such action is necessary because the Recipient or assignee has not taken or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use.

(2) Such action is necessary to alleviate health or safety needs, which are not reasonably satisfied by the Recipient, assignee, or their licensees.

(3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Recipient, assignee, or licensees; or

(4) Such action is necessary because the agreement required by paragraph (i) of this provision has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

(k) Special Provisions for Agreements with Nonprofit Organizations.

If the Recipient is a nonprofit organization, it agrees that:

(1) Rights to a subject invention in the United States may not be assigned without the approval of the National Park Service, except where such assignment is made to an organization which has as one of its primary functions the management of inventions, provided that such assignee will be subject to the same provisions as the Recipient;

(2) The Recipient will share royalties collected on a subject invention with the inventor, including Federal employee co-inventors (when the National Park Service deems it appropriate) when the subject invention is assigned in accordance with 35 U.S.C. 202(e) and 37 CFR 401.10;

(3) The balance of any royalties or income earned by the Recipient with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions, will be utilized for the support of scientific research or education; and

(4) It will make efforts that are reasonable under the circumstances to attract licensees of subject invention that are small business firms and that it will give a preference to a small business firm when licensing a subject invention if the Recipient determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; provided, that the Recipient is also satisfied that the small business firm has the capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the Recipient. However, the Recipient agrees that the National Park Service may review the Recipient's licensing program and decisions regarding small business applicants, and the Recipient will negotiate changes to its licensing policies, procedures, or practices with the National Park Service when this review discloses that the Recipient could take reasonable steps to implement more effectively the requirements of this paragraph (k)(4).

(l) Communication. Communications regarding matters relating to this provision shall be directed to the Deputy Associate Solicitor, Branch of Procurements and Patents, Office of the Solicitor, U.S. Department of the Interior, 1849 C Street NW, Washington, D.C. 20240.

11. ENSURING THE FUTURE IS MADE IN ALL OF AMERICA BY ALL OF AMERICA'S WORKERS PER E.O. 14005 (dated January 25, 2021)

Per Executive Order 14005, entitled "Ensuring the Future Is Made in All of America by All of America's Workers" the Recipient shall maximize the use of goods, products, and materials produced in, and services offered in, the United States, and whenever possible, procure goods, products, materials, and services from sources that will help American businesses compete in strategic industries and help America's workers thrive.

12. SECTION 508 OF THE REHABILITATION ACT OF 1973 (29 U.S.C. §794 (d))

While the requirements of Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794d), do not apply to financial assistance agreements, the NPS is subject to the Act's requirements that all documents posted on an NPS, or NPS-hosted website comply with the accessibility standards of the Act. Accordingly, final deliverable reports prepared under this agreement and submitted in electronic format must be submitted in a format whereby NPS can easily meet the requirements of Section 508 of the Rehabilitation Act of 1973, as amended. *NOTE: Progress Reports and financial reports are not considered final deliverables and therefore the following requirements do not apply.*

All electronic documents prepared under this Agreement must meet the requirements of Section 508 of the Rehabilitation Act of 1973, as amended. The Act requires that all electronic products prepared for the Federal Government be accessible to persons with disabilities, including those with vision, hearing, cognitive, and mobility impairments. View [Section 508 of the Rehabilitation Act, Standards and Guidelines](#) for detailed information.

The following summarizes some of the requirements for preparing NPS reports in conformance with Section 508 for eventual posting by NPS to an NPS-sponsored website. For specific detailed guidance and checklists for creating accessible digital content, please go to [Section 508.gov, Create Accessible Digital Products](#). All accessible digital content must conform to the requirements and techniques of the [Web Content Accessibility Guidelines \(WCAG\) 2.0 or later, Level AA Success Criteria](#).

a. Electronic documents with images

Provide a text equivalent for every non-text element (including photographs, charts, and equations) in all publications prepared in electronic format. Use descriptions such as "alt" and "longdesc" for all non-text images or place them in element content. For all documents prepared, vendors must prepare one standard HTML format as described in this statement of work AND one text format that

includes descriptions for all non-text images. "Text equivalent" means text sufficient to reasonably describe the image. Images that are merely decorative require only a very brief "text equivalent" description. However, images that convey information that is important to the content of the report require text sufficient to reasonably describe that image and its purpose within the context of the report.

b. Electronic documents with complex charts or data tables

When preparing tables that are heavily designed, prepare adequate alternate information so that assistive technologies can read them out. Identify row and column headers for data tables. Provide the information in a non-linear form. Markups will be used to associate data cells and header cells for data tables that have two or more logical levels of row and column headers.

c. Electronic documents with forms

When electronic forms are designed to be completed on-line, the form will allow people using assistive technology to access the information, field elements, and functionality required for completion and submission of the form, including all directions and cues.

13. ANTI-DEFICIENCY ACT

Pursuant to 31 U.S.C. §1341 nothing contained in this Agreement shall be construed as binding the NPS to expend in any one fiscal year any sum in excess of appropriations made by Congress, for the purposes of this Agreement for that fiscal year, or other obligation for the further expenditure of money in excess of such appropriations.

14. ASSIGNMENT

No part of this Agreement shall be assigned to any other party without prior written approval of the NPS and the Assignee.

15. MEMBER OF CONGRESS

Pursuant to 41 U.S.C. § 22, no Member of Congress shall be admitted to any share or part of any contract or agreement made, entered into, or adopted by or on behalf of the United States, or to any benefit to arise thereupon.

16. AGENCY

The Recipient is not an agent or representative of the United States, the Department of the Interior, NPS, or the Park, nor will the Recipient represent itself as such to third parties. NPS employees are not agents of the Recipient and will not act on behalf of the Recipient.

17. NON-EXCLUSIVE AGREEMENT

This Agreement in no way restricts the Recipient or NPS from entering into similar agreements, or participating in similar activities or arrangements, with other public or private agencies, organizations, or individuals.

18. PARTIAL INVALIDITY

If any provision of this Agreement or the application thereof to any party or circumstance shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement or the application of such provision to the parties or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby and each provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

19. NO EMPLOYMENT RELATIONSHIP

This Agreement is not intended to and shall not be construed to create an employment relationship between NPS and Recipient or its representatives. No representative of Recipient shall perform any function or make any decision properly reserved by law or policy to the Federal government.

20. NO THIRD-PARTY RIGHTS

This Agreement creates enforceable obligations between only NPS and Recipient. Except as expressly provided herein, it is not intended, nor shall it be construed to create any right of enforcement by or any duties or obligation in favor of persons or entities not a party to this Agreement.

21. PROGRAM INCOME

If the Recipient earns program income, as defined in 2 CFR §200.1, during the period of performance of this agreement, to the extent available the Recipient must disburse funds available from program income, and interest earned on such funds, before requesting additional cash payments (2 CFR §200.305 (5)). As allowed under 2 CFR §200.307, program income may be added to the Federal award by the Federal agency and Recipient. The program income must be used for costs incurred during the period of performance or allowable closeout costs. Disposition of program income remaining after the end of the period of performance shall be negotiated as part of the agreement closeout process.

22. RIGHTS IN DATA

The Recipient must grant the United States of America a royalty-free, non-exclusive and irrevocable license to publish, reproduce and use, and dispose of in any manner and for any purpose without limitation, and to authorize or ratify publication, reproduction or use by others, of all copyrightable material first produced or composed under this Agreement by the Recipient, its employees or any individual or concern specifically employed or assigned to originate and prepare such material.

23. CONFLICT OF INTEREST

(a) Applicability.

1. This section intends to ensure that non-Federal entities and their employees take appropriate steps to avoid conflicts of interest in their responsibilities under or with respect to Federal financial assistance agreements.
2. In the procurement of supplies, equipment, construction, and services by recipients and by subrecipients, the conflict-of-interest provisions in 2 CFR 200.318 apply.

(b) Requirements.

1. Non-Federal entities must avoid prohibited conflicts of interest, including any significant financial interests that could cause a reasonable person to question the recipient's ability to provide impartial, technically sound, and objective performance under or with respect to a Federal financial assistance agreement.
2. In addition to any other prohibitions that may apply with respect to conflicts of interest, no key official of an actual or proposed recipient or subrecipient, who is substantially involved in the proposal or project, may have been a former Federal employee who, within the last one (1) year, participated personally and substantially in the evaluation, award, or administration of an award with respect to that recipient or subrecipient or in development of the requirement leading to the funding announcement.
3. No actual or prospective recipient or subrecipient may solicit, obtain, or use non-public information regarding the evaluation, award, or administration of an award to that recipient or subrecipient or the development of a Federal financial assistance opportunity that may be of competitive interest to that recipient or subrecipient.

(c) Notification.

1. Non-Federal entities, including applicants for financial assistance awards, must disclose in writing any conflict of interest to the DOI awarding agency or pass-through entity in accordance with 2 CFR 200.112, Conflicts of interest.

(d) Recipients must establish internal controls that include, at a minimum, procedures to identify, disclose, and mitigate or eliminate identified conflicts of interest. The recipient is responsible for notifying the Financial Assistance Officer in writing of any conflicts of interest that may arise during the life of the award, including those that have been reported by subrecipients. Restrictions on Lobbying. Non-Federal

entities are strictly prohibited from using funds under this grant or cooperative agreement for lobbying activities and must provide the required certifications and disclosures pursuant to 43 CFR Part 18 and 31 USC 1352.

- (e) Review Procedures. The Financial Assistance Officer will examine each conflict-of-interest disclosure on the basis of its particular facts and the nature of the proposed grant or cooperative agreement and will determine whether a significant potential conflict exists and, if it does, develop an appropriate means for resolving it.
- (f) Enforcement. Failure to resolve conflicts of interest in a manner that satisfies the Government may be cause for termination of the award. Failure to make required disclosures may result in any of the remedies described in 2 CFR 200.338, Remedies for Noncompliance, including suspension or debarment (see also 2 CFR Part 180).

24. BUILD AMERICA, BUY AMERICA

Pursuant to 2 CFR Part 184 – Buy America Preferences for Infrastructure Projects. None of the funds under an award may be obligated for an infrastructure project unless all the iron, steel, manufactured products, and construction materials used in the project are produced in the U.S., unless subject to an approved waiver. This part applies to an entire infrastructure project even if funded by Federal and non-Federal funds under one or more awards. Recipients must include this preference in all subawards, contracts, and purchase orders related to infrastructure projects under Federal awards.

The Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project but are not an integral part of the structure or permanently affixed to the infrastructure project.

For further information on the Buy America preference, please visit [“Buy America” Domestic Sourcing Guidance and Waiver Process for DOI Financial Assistance Agreements | U.S. Department of the Interior](#). Additional information can also be found at the White House Made in America Office website: [Made In America | OMB | The White House](#).

Waivers

There may be instances where an award qualifies, in whole or in part, for an existing DOI general applicability waiver as described at: [Approved DOI General Applicability Waivers | U.S. Department of the Interior](#).

When necessary, recipients may apply for, and the Department of the Interior (DOI) may grant, a waiver from these requirements, subject to review by the Made in America Office. If a general applicability waiver does not already apply, a request to waive the application of the domestic content procurement preference may be submitted to the Financial Assistance Awarding Officer in writing. Waiver request submission requirements are described at: [“Buy America” Domestic Sourcing Guidance and Waiver Process for DOI Financial Assistance Agreements | U.S. Department of the Interior.](#)

Questions pertaining to waivers should be directed to the *Financial Assistance Awarding Officer*.

Definitions

The definitions applicable to this term are set forth at 2 CFR §184.3, the full text of which is incorporated by reference. For additional legal definitions and sourcing requirements, the recipient must consult the [“Buy America” Domestic Sourcing Guidance and Waiver Process for DOI Financial Assistance Agreements | U.S. Department of the Interior, 2 CFR Part 184, and the OMB Memorandum M-24-02, Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure.](#)

25. SIGNATURES

Recipients are NOT required to sign the Notice of Financial Assistance Award letter or any other award document. As per DOI standard award terms and conditions, the recipient's acceptance of a financial assistance award is defined as the start of work, drawing down funds, or accepting the award via electronic means.

26. EXECUTIVE ORDERS AND DEPARTMENT OF THE INTERIOR SECRETARY ORDERS

Recipients must comply with all applicable Presidential Executive Orders found at: <https://www.whitehouse.gov/presidential-actions/> and all applicable DOI Secretary's Orders found at: <https://www.doi.gov/document-library/secretary-order> that are in effect at the time of award, or that may take effect during the period of performance of the award.

MISSOURI DEPARTMENT OF NATURAL RESOURCES
Federal Financial Assistance Agreements
General Terms and Conditions

These general terms and conditions highlight requirements which are especially pertinent to federal assistance agreements made by the Missouri Department of Natural Resources. These general terms and conditions do not set out all of the provisions of the applicable laws and regulations, nor do they represent an exhaustive list of all requirements applicable to this award. These terms and conditions are emphasized here because they are frequently invoked and their violation is of serious concern.

Pursuant to 2 CFR 200.331, the sub-recipient shall require the language of the certifications and terms applicable to financial assistance awards to be included in sub-award document at all tiers and all sub-recipients shall certify and disclose accordingly. This “flow down” requirement imposed on the sponsoring agent by the Department is to ensure the financial assistance agreement is used in accordance with Federal statutes, regulations and the terms of the agreement. The sponsoring agent is accountable to the Department for compliance with Federal requirements. In turn, the Department is responsible to federal agency for ensuring sponsoring agents comply with Federal requirements and with federal General Terms and Conditions:

In addition to these terms and conditions, the recipient must comply with all governing requirements of their financial assistance agreement, including the Title 2 Grants and Agreements, Chapter II Part 200 of the Code of Federal Regulation, under the title "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards." The regulations can be found at http://www.ecfr.gov/cgi-bin/text-idx?SID=da74e925e27b89e7f8625019850377cf&tpl=/ecfrbrowse/Title02/2tab_02.tpl.

I. Administrative Requirements

- A. **Method of Payment.** The recipient will be reimbursed by the Department for all allowable expenses incurred in performing the scope of services. The recipient shall report project expenses and submit to the Department original payment requests as required by division/program per the financial assistance agreement. The form must be completed with the Department payment request amount and local share detailed, if applicable. Payment requests must provide a breakdown of project expenses by the budget categories contained in the financial assistance agreement budget. Payment requests must be received by the Department per the financial assistance agreement. No reimbursement will be made for expenditures prior to award unless approval for pre-award costs has been granted. No reimbursements will be made for expenditures incurred after the closing budget date unless a budget time period extension has been granted by the Department prior to the closing budget date.
1. Payments under non-construction grants will be based on the grant sharing ratio as applied to the total agreed project cost for each invoice submitted unless the financial assistance agreement specifically provides for advance

payments. Advance payments may only be made upon a showing of good cause or special circumstances, as determined by the Department and must be as close as is administratively feasible to the actual disbursement. Advance payments will only be made to cover estimated expenditures as agreed. The Department will not advance more than 25% of the total amount of the grant unless the recipient demonstrates good cause.

2. All payment requests must have the following certification by the authorized recipient official: By signing this report, I certify to the best of my knowledge and belief the report is true, complete and accurate and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the financial assistance agreement. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise.

B. Retention and Custodial Requirements for Records. The recipient shall retain financial records, supporting documents, statistical records and all other records pertinent to the financial assistance agreement for a period of five years starting from the date of submission of the final payment request. Authorized representatives of federal awarding agencies, the Federal Inspectors General, the Comptroller General of the United States, the State Auditor's Office, the Department or any of their designees shall have access to any pertinent books, documents, and records of recipient in order to conduct audits or examinations. The recipient agrees to allow monitoring and auditing by the Department and/or authorized representative. If any litigation, claim, negotiation, audit, or other action involving the records has been started before the expiration of the five year period, the recipient shall retain records until all litigations, claims or audit findings involving the records have been resolved and final action taken.

C. Program Income.

1. The recipient is encouraged to earn income to defray program costs. Program income means gross income earned that is directly generated by a supported activity or earned as a result of the financial assistance agreement during the period of performance. Program income includes but is not limited to income from: fees for services performed, the use or rental of real or personal property acquired with financial assistance funds, the sale of commodities or items fabricated under the financial assistance agreement, license fees and royalties on patents and copyrights and payments of principal and interest on loans made with financial assistance funds. Program income does not include items such as rebates, credits, discounts, or refunds and interest earned.

2. Program income shall be deducted from total allowable outlays to determine net allowable costs. With prior approval of the federal awarding agency, program income may be added to the federal award or used to meet cost sharing or matching requirements. The default deductive alternative requires that program income be deducted from total allowable costs to determine the net allowable amount to which the respective matching ratios are applied. For example, 50/50 share ratio agreement with total allowable costs of \$10,000 that earns \$1,000 in program income would result in \$4,500 net share and a \$4,500 net financial assistance share.

D. Match or Cost Share Funding. In general, match or cost sharing represents that portion of project costs not borne by state appropriations. The matching share will usually be prescribed as a minimum percentage. In-kind (noncash) contributions are allowable project costs when they directly benefit and are necessary and reasonable for the accomplishment of the project or program objectives. Any in-kind match must be assigned a fair market value consistent with those paid for similar work in the labor market and be documented and verifiable. Neither costs nor the values of third party in-kind contributions count towards satisfying a cost sharing or matching requirement of a grant agreement if they have been or will be counted towards satisfying a cost sharing or matching requirement of another federal financial assistance agreement, a federal procurement contract, or any other award of federal funds. Federal funds from another federal grant or financial assistance agreement shall not count towards satisfying a cost sharing or matching requirement of a grant agreement.

1. Match or cost share funding will be established by the Department through negotiation with the recipient. Signature by both the Department and recipient on the financial assistance agreement form firmly affixes the match or cost sharing ratios. Full expenditure of recipient match or cost share funding is required over the life of the financial assistance agreement. Recipient must submit payment requests to the Department, as required by the financial assistance agreement, and provide financial records for total expenditure of state and match or cost share funding. The Department will reimburse the recipient for its percentage portion agreed to less any negotiated withholding.
2. Failure to provide 100% of the match or cost share ratio of total expenditures as identified in the financial assistance agreement may cause the recipient to become ineligible to receive additional financial assistance from the Department. Failure to provide the required match may result in other enforcement remedies as stated in Y. for noncompliance.

E. Financial Management Systems. The financial management systems of the recipient must meet the following standards:

1. **Financial Reporting.** Accurate, current, and complete disclosure of financial results of financially assisted activities must be made in accordance with the financial reporting requirements of the financial assistance agreement;
2. **Accounting Records.** Maintain records which adequately identify the source and application of funds provided for financially assisted activities to include the CFDA title and number, Federal Award Identification Number (FAIN) and year, name of the federal agency and pass-thru entity. These records must contain information pertaining to financial assistance awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures, and income;
3. **Internal Control.** Effective written internal controls and accountability must be maintained for all recipient cash, real and personal property, and other assets. The recipient must adequately safeguard all such property and must assure that it is used solely for authorized purposes. These internal controls should be in compliance with guidance in the “Standards for Internal Control in the Federal Government” and the “Internal Control Integrated Framework”;
4. **Budget Control.** Actual expenditures or outlays must be compared with budgeted amounts for each financial assistance agreement;
5. **Allowable Costs.** OMB cost principles, applicable federal agency program regulations, and the financial assistance agreement scope of work will be followed in determining the reasonableness, allowability and allocability of costs;
6. **Source Documentation.** Records must adequately identify 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. The documentation must be made available by the recipient at the Department’s request or any of the following: authorized representatives of the federal awarding agency, the Federal Inspector General, the Comptroller General of the United States, State Auditor’s Office or any of their designees;
7. The recipient shall have written procedures in place to minimize the time lapsed between money disbursed by the Department and spent by the recipient.

- F. Reporting of Program Performance.** The recipient shall submit to the Department a performance report for each program, function, or activity as specified by the financial assistance agreement or at least annually and/or after completion of the project. Performance report requirements, if not expressly stated in the scope of work, should include, at a minimum, a comparison of actual accomplishments to the goals established, reasons why goals were not met, including analysis and explanation of cost overruns or higher unit cost when appropriate, and other pertinent information. Representatives of the Department, the federal awarding agency, the Federal Inspector General, the Comptroller General of the United States, State Auditor's Office or any of their designees shall have the right to visit the project site(s) during reasonable hours for the duration of the contract period and for five years thereafter.
- G. Budget and Scope of Work Revisions.** The recipient is permitted to rebudget within the approved direct cost budget to meet unanticipated requirements. The following is a non-exclusive listing of when a recipient must request approval in writing to revise budgets and scopes of work under the following conditions:
1. For non-construction grants, the recipient shall obtain the prior approval of the Department, unless waived by the Department, for cumulative transfers among direct cost categories, or, if applicable, among separately budgeted programs, projects, functions or activities when the accumulative amounts of such transfers exceed or are expected to exceed 10% of the current total approved budget whenever the Department's share exceeds the simplified acquisition amount threshold.
 2. For construction and non-construction projects, the recipient shall obtain prior written approval from the Department for any budget revision which would result in the need for additional funds.
 3. For combined non-construction and construction projects, the recipient must obtain prior written approval from the Department before making any fund or budget transfer from the non-construction to construction or vice versa.
 4. A recipient under non-construction projects must obtain prior written approval from the Department whenever contracting out, subgranting, or otherwise obtaining a third party to perform activities which are central to the purpose of the award.
 5. Changes to the scope of services, including changes to key personnel described in the financial assistance agreement, must receive prior approval from the Department. Approved changes in the scope of work or budget shall be incorporated by written amendment to the financial assistance agreement.

6. 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.
7. Changes in the amount of approved cost-sharing or matching provided by the recipient. No other prior approval requirements for specific items may be imposed unless a deviation has been approved.
8. Initiate a one-time extension of the period of performance by up to 12 months unless one or more of the conditions outlined below apply. For one-time extensions, the recipient must notify the Department in writing with the supporting reasons and revised period of performance at least 90 calendar days before the end of the period of performance specified in the financial assistance agreement. This one-time extension may not be exercised merely for the purpose of using unobligated balances. Extensions require explicit prior approval from Department when:
 - a. The terms and conditions of the financial assistance agreement prohibit the extension.
 - b. The extension requires additional funds.
 - c. The extension involves any change in the approved objectives or scope of the project.
 - d. Carry forward unobligated balances to subsequent period of performance.
9. Extending the agreement past the original completion date requires approval of the Department.

H. Equipment Use. The recipient agrees that any equipment purchased pursuant to this agreement shall be used for the performance of services under this agreement during the term of this agreement. The recipient may not use equipment purchased pursuant to this agreement for any other purpose without approval from the Department. The equipment shall not be moved from the State of Missouri without approval from the Department. State agencies shall follow the Code of State Regulations. The following standards shall govern the utilization and disposition of equipment acquired with financial assistance funds:

1. Title to equipment acquired under this financial assistance agreement will vest with the recipient on acquisition. Equipment means an article of nonexpendable, tangible personal property (including information technology systems) having a useful life of more than one year and a per unit acquisition cost which equals or exceed the lesser of the capitalization level established by the recipient for financial statement purposes or \$5,000.

- a. Equipment shall be used by the recipient in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by Department funds. When no longer needed for the original program or project, the equipment may be used in other activities currently or previously supported by the Department or the federal agency. If the Department puts the recipient on notice that it believes assistance assets are not being used for the intended purpose, the recipient shall not sell, give away, move or abandon the assets without the Department's prior written approval.
 - b. The recipient shall also make equipment available for use on other projects or programs currently or previously supported by the Department, providing such use will not interfere with the work on the projects or program for which it was originally acquired. User fees should be considered if appropriate.
 - c. The recipient must not use equipment acquired with funding from this financial assistance agreement to provide services for a fee to compete unfairly with private companies that provide equivalent services, unless specifically permitted or contemplated by state or federal law. This fee may be considered program income under Section C, Program Income.
 - d. When acquiring replacement equipment, the recipient may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property, subject to the approval of the Department.
2. Equipment Management. The recipient's procedures for managing equipment, whether acquired in whole or in part with financial assistance funds, will, at a minimum, meet the following requirements until disposition takes place:
- a. The recipient must maintain property records that include a description of the equipment, a serial number or other identification number, the source of funding, the acquisition date, cost of the property, percentage of federal or state participation in the cost of the property, the location, use and condition of the property and disposition information including the date of the disposal and sale price of the property.
 - b. A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.

- c. A control system must be developed to ensure adequate safeguards to prevent against loss, damage, or theft of the property. Any loss, damage, or theft shall be reported to and investigated by local authorities. The recipient shall procure and maintain insurance covering loss or damage to equipment purchased with a financial assistance agreement, with financially sound and reputable insurance companies or through self-insurance. Amounts and coverage of such risks should be that which are usually carried by companies engaged in the same or similar business and similarly situated.
 - d. The recipient must develop adequate maintenance procedures to keep the property in good condition.
 - e. If the recipient is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return.
- 3. Disposition. When original or replacement equipment acquired under the financial assistance agreement is no longer needed for the original project or program or for other activities currently or previously supported by the Department, the recipient shall dispose of the equipment as follows:
 - a. Items of equipment with a current per-unit fair market value \$5,000 or less may be retained, sold or otherwise disposed of with no further obligation to the Department.
 - b. For items of equipment with a current per unit fair market value of more than \$5,000, the Department shall have a right to an amount calculated by multiplying the current market value or proceeds from sale by the Department's share of the equipment. Disposition instructions must be requested from the Department when equipment is no longer needed.
 - c. In cases where a recipient fails to take appropriate disposition actions, the Department may direct the recipient how to dispose of the equipment.
 - d. If the Department puts the recipient on notice that it believes assistance assets are not being used for the intended purpose, the recipient shall not sell, give away, move or abandon the asset without Department's written approval.
- I. **Supplies.** The recipient agrees that all supplies purchased pursuant to this agreement shall be used for the performance of services under this agreement during the term of this agreement. Title to supplies acquired under a financial assistance agreement will

- vest, upon acquisitions, with the recipient. If there is a residual inventory of unused supplies exceeding \$5,000 in total aggregate fair market value upon termination or completion of the award, and if the supplies are not needed for any other federally sponsored programs or projects, the recipient shall compensate the department for its share. The recipient must not use supplies acquired with funding from this financial assistance agreement to provide services for a fee to compete unfairly with private companies that provide equivalent services, unless specifically permitted or contemplated by state or federal law. This fee may be considered program income under Section C, Program Income.
- J. **Inventions and Patents.** If any recipient produces subject matter, which is or may be patentable in the course of work sponsored by this financial assistance agreement, the recipient shall promptly and fully disclose such subject matter in writing to the Department. In the event that the recipient fails or declines to file Letters of Patent or to recognize patentable subject matter, the Department reserves the right to file the same. The Department grants to the recipient the opportunity to acquire an exclusive license, including the right to sublicense, with a royalty consideration paid to the Department. Payment of royalties by recipient to the Department will be addressed in a separate royalty agreement.
- K. **Copyrights.** Except as otherwise provided in the terms and conditions of this financial assistance agreement, the author or the recipient is free to copyright any books, publications, or other copyrightable material developed in the course of this agreement. However, the Department and federal awarding agency reserve a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, with the approval of the Department, the work for government purposes.
- L. **Prior Approval for Publications.** The recipient shall submit to the Department two draft copies of each publication and other printed materials which are intended for distribution and are financed, wholly or in part, by financial assistance funds. The recipient shall not print or distribute any publication until receiving written approval by the Department.
- M. **Mandatory Disclosures.** The recipient agrees that all statements, press releases, requests for proposals, bid solicitations, and other documents describing the program/project for which funds are now being awarded will include a statement of the percentage of the total cost of the program/project which is financed with federal and state money, and the dollar amount of federal and state funds for the program/project.
- N. **Procurement Standards.** The recipient shall use their own documented procurement procedures that reflect applicable state and local laws and regulations provided that procurement conforms to standards set forth in the "Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards."

1. No work or services paid for wholly or in part with state or federal funds, will be contracted without the written consent of the Department.
 2. The recipient agrees that any contract, interagency agreement, or equipment to be procured under this award which was not included in the approved work plan must receive formal Department approval prior to expenditure of funds associated with that contract, interagency agreement, or equipment purchase.
- O. **Audit Requirements.** The Department and the State Auditor's Office have the right to conduct audits of recipients at any time. The recipient shall arrange for independent audits as prescribed in "Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, Subpart F", as applicable. Audits must confirm that records accurately reflect the operations of the recipient; the internal control structure provides reasonable assurance that assets are safeguarded, and recipient is in compliance with applicable laws and regulations. When the recipient has its yearly audit conducted by a governmental agency or private auditing firm, the relevant portion(s) of the audit report will be submitted to the Department. Other portions of the audit shall be made available at the Department's request.
- P. **Freedom of Information Act.** 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 Department must request, and the recipient must provide, within a reasonable time, the research data so that they can be made available to the public through the procedures established under the FOIA. If the Department obtains the research data solely in response to a FOIA request, the Department 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 Department and the recipient. 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)).
- Q. **Conflicts of Interest.** The recipients must have written standards and policies covering conflicts of interest. No party to this financial assistance agreement, nor any officer, agent, or employee of either party to this assistance agreement, shall participate in any decision related to such assistance agreement which could result in a real or apparent conflict of interest, including any decision which would affect their personal or pecuniary interest, directly or indirectly. The recipient is advised that, consistent with Chapter 105, RSMo, no state employee shall perform any service for consideration paid by the recipient for one year after termination of the employee's state employment by which the former state employee attempts to influence a decision of a state agency. A state employee who leaves state employment is permanently banned from performing any service for any consideration in relation to any case, decision, proceeding, or application in which the employee personally participated during state employment.

- R. **State Appropriated Funding.** The recipient agrees that funds expended for the purposes of this financial assistance agreement must be appropriated and made available by the Missouri General Assembly for each fiscal year included within the financial assistance agreement period, as well as being awarded by the federal or state agency supporting the project. Therefore, the financial assistance agreement shall automatically terminate without penalty or termination costs if such funds are not appropriated and/or granted. In the event that funds are not appropriated and/or granted for the financial assistance agreement, the recipient shall not prohibit or otherwise limit the Department's right to pursue alternate solutions and remedies as deemed necessary for the conduct of state government affairs. The requirements stated in this paragraph shall apply to any amendment or the execution of any option to extend the financial assistance agreement.
- S. **Eligibility, Debarment and Suspension (SubPart C).** By applying for this financial assistance agreement, the recipient verifies that it, its board of directors, and all of its principals are currently in compliance with all state and federal environmental laws and court orders issued pursuant to those laws, and that all environmental violations have been resolved (for example, no pending or unresolved Notice of Violation (NOV)) at the time of application. If compliance issues exist, the recipient shall disclose to the Department all pending or unresolved violations noted in a NOV, administrative order, or civil and criminal lawsuit, but only where those alleged violations occurred in the State of Missouri. If a NOV occurs during the financial assistance period, the recipient must notify the Department immediately. The Department will not make any award or payment at any time to any party which is debarred or suspended, under federal or state authority, or is otherwise excluded from or ineligible for participation in federal assistance under Executive Order 12549, "Debarment and Suspension." The recipient may access the Excluded Parties List at www.sam.gov.
- T. **Restrictions on Lobbying.** No portion of this agreement may be expended by the recipient to pay any person for influencing or attempting to influence the executive or legislative branch with respect to the following actions: awarding of a contract; making of an assistance agreement; making of a loan; entering into a cooperative agreement; or the extension, continuation, renewal, amendment or modification of any of these as prohibited by Section 319, Public Law 101-121 (31 U.S.C. 1352).

In accordance with the Byrd Anti-Lobbying Amendment, any recipient who makes a prohibited expenditure under Title 40 CFR Part 34 or fails to file the required certification or lobbying forms shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure.

- U. **Recycled Paper.** Consistent with Federal Executive Order 13423 and EPA Executive Order 1000.25, the recipient shall use recycled paper consisting of at least 30% post-consumer fiber and double sided printing for all reports which are prepared as a part of this assistance agreement and delivered to the Department. The recipient must use

recycled paper for any materials that it produces and makes available to any parties. The chasing arrows symbol representing the recycled content of the paper will be clearly displayed on at least one page of any materials provided to any parties.

V. Contracting with Small and Minority Firms, Women's Business Enterprise, and Labor Surplus Area Firms. To the extent permitted by law and state and federal executive orders, all recipients shall make every feasible effort to target the percentage of goods and services procured from certified minority business enterprises (MBE) and women business enterprises (WBE) to 10% and 10%, respectively, when utilizing financial assistance funds to purchase supplies, equipment, construction and services related to this financial assistance agreement.

1. The recipient agrees to take all necessary affirmative steps required to assure that small and minority firms and women's business enterprises are used when possible as sources when procuring supplies, equipment, construction and services related to the financial assistance agreement. The recipient agrees to include information about these requirements in solicitation documents. Affirmative steps shall include:
 - a. Placing qualified small and minority business and women's business enterprises on solicitation lists;
 - b. Ensuring that small and minority business and women's business enterprises are solicited whenever they are potential sources;
 - c. Dividing total requirements, when economically feasible, into small tasks or quantities to permit maximum participation by small and minority business and women's business enterprises;
 - d. Establishing delivery schedules, where the requirements of work will encourage participation by small and minority business and women's business enterprises;
 - e. Using the services of the Small Business Administration, the Minority Business Development Agency of the U.S. Department of Commerce and the MO Office of Equal Opportunity, and;
 - f. Requiring any prime contractor or other subrecipients, if subagreements are to be allowed, to take the affirmative steps in subparagraphs a. through e. of this section.
2. For EPA funded financial assistance agreements, the recipient agrees to include disadvantaged business enterprises in the affirmative steps indicated above. For EPA funded financial assistance agreements, when

required the recipient shall utilize EPA form 5700-52A to report to Department procurements under the financial assistance agreement.

W. **Disputes.** The recipient and the Department should attempt to resolve disagreements concerning the administration or performance of the financial assistance agreement. If an agreement cannot be reached, the Department will provide a written decision. Such decision of the Department shall be final unless a request for review is submitted to the division director within ten (10) business days after the decision. Such request shall include: (1) a copy of the Department's final decision; (2) a statement of the amount in dispute; (3) a brief description of the issue(s) involved; and (4) a concise statement of the objections to the final decision. A decision by the Department shall constitute final action.

X. **Termination**

1. **Termination for Cause.** The Department may terminate any financial assistance agreement, in whole or in part, at any time before the date of completion whenever it is determined that the recipient has failed to comply with the terms and conditions of the financial assistance agreement. The Department shall promptly notify the recipient in writing of such a determination and the reasons for the termination, together with the effective date. The Department reserves the right to withhold all or a portion of agreement funds if the recipient violates any term or condition of this financial assistance agreement. Termination for cause may be considered for evaluating future applications. The recipient may object to terminations with cause and may provide information and documentation challenging the termination.
2. **Termination for Convenience.** Both the Department and the recipient may terminate the financial assistance agreement, in whole or in part, when both parties agree that the continuation of the project would not produce beneficial results commensurate with the further expenditure of funds.
3. Financial assistance agreements are not transferable to any person or entity.
4. Department and the recipient remain responsible for compliance with all closeout requirements.

Y. **Enforcement; Remedies for Noncompliance.** If the recipient falsifies any award document or materially fails to comply with any term of this financial assistance agreement, the Department may take one or more of the following actions, as appropriate:

1. Suspend or terminate, in whole or part, the current agreement;

2. Disallow all or part of the cost of the activity or action not in compliance;
3. Temporarily withhold cash payments pending the recipient's correction of the deficiency;
4. Withhold further awards from the recipient;
5. Order the recipient not to transfer ownership of equipment purchased with assistance money without prior Department approval; or
6. Take other remedies that may be legally available, including cost recovery, breach of contract, and suspension or debarment.

Z. **Subgrantee's Signature.** The recipient's signature on the application and the award documents signifies the recipient's agreement to all of the terms and conditions of the financial assistance agreement.

AA. **Human Trafficking. This requirement applies to non-profit recipients or subrecipients.** The recipient, their employees, subrecipients under this agreement, and subrecipients' employees may not engage in severe forms of trafficking in persons during the period of time that the agreement is in effect; procure a commercial sex act during the period of time that the award is in effect; or use forced labor in the performance of the agreement or subagreements under the award. The department has the right to terminate unilaterally: (1) implement section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended, noncompliance that are available to the recipient under this agreement.

BB. **Illegal Immigration.** Any municipality that enacts or adopts a sanctuary policy will be ineligible for moneys provided through financial assistance agreements administered by any state agency or department until the policy is repealed or is no longer in effect (Missouri Statutes – RSMo 67.307 (2)). No business entity or employer shall knowingly employ, hire for employment, or continue to employ an unauthorized alien to perform work within the state of Missouri (RSMo 285.525 – 285.530).

CC. **Management Fees.** Management fees or similar charges in excess of the direct costs and approved indirect rates are not allowable. The term "management fees or similar charges" refers to expenses added to the direct costs in order to accumulate and reserve funds for ongoing business expenses, unforeseen liabilities, or for other similar costs which are not allowable under this agreement. Management fees or similar charges may not be used to improve or expand the project funded under this agreement, except to the extent authorized as a direct cost of carrying out the scope of work.

DD. Federal Funding Accountability and Transparency Act (FFATA)

Requirements. If the original assistance agreement amount is \$30,000 or more or an amendment increases the award amount to \$30,000 or greater, the recipient must submit the following to the Department prior to Department signing the amendment (Subrecipient Informational Form):

1. Location of the entity receiving the financial assistance and primary location of performance under the award, including city, state, congressional district and county;
2. A unique entity identifier of the entity receiving the financial assistance;
3. A unique entity identifier of the parent entity of the recipient; and
4. Names and total compensation for the five most highly compensated officers for the preceding completed fiscal year

EE. Executive Compensation. If FFATA reporting requirements apply and if the agreement period will exceed 12 months, the recipient must provide to the Department updated compensation information for their five most highly compensated officers using the Subrecipient Informational Form at the end of each 12 month period.

FF. Competency. The recipient ensures that all personnel associated with this financial assistance agreement, including staff, contractors and subrecipients, possess adequate education, training and experience to satisfactorily perform all technical tasks to be performed in order to fulfill the requirements of this agreement.

GG. Prohibition on certain telecommunications and video surveillance service or equipment. Recipient is prohibited from obligating or expending funds to procure or obtain; extend or renew a contract to procure or obtain; or enter into a contract to procure or obtain equipment, services, or systems that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

(i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

(ii) Telecommunications or video surveillance services provided by such entities or using such equipment.

(iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

Consistent with 2 CFR 200.471, cost incurred for telecommunications and video surveillance services or equipment such as phones, internet, video surveillance, and cloud servers are allowable except for the following circumstances:

- a. Obligating or expending funds for covered telecommunications and video surveillance services or equipment or services as described in 2 CFR 200.216 to:
 - a. Procure or obtain, extend or renew a contract to procure or obtain;
 - b. Enter into a contract (or renew a contract) to procure, or
 - c. Obtain the equipment, services, or systems

II. **Statutory Requirements**

The recipient must comply with all federal, state and local laws relating to employment, construction, research, environmental compliance, and other activities associated with grants from the Department. Failure to abide by these laws is sufficient grounds to cancel the agreement. For a copy of state and federal laws that typically apply to financial assistance agreements contact the Department. By applying for this financial assistance agreement, the recipient certifies that the recipient, its board of directors and principals are in compliance with the specific federal and state laws set out below. Further, the recipient shall report to the Department any instance in which the recipient or any member of its board of directors or principals is determined by any administrative agency or by any court in connection with any judicial proceeding to be in noncompliance with any of the specific federal or state laws set forth below. Such report shall be submitted within ten (10) working days following such determination. Failure to comply with the reporting requirement may be grounds for termination of this financial assistance agreement or suspension or debarment of the recipient.

A. Laws and regulations related to nondiscrimination:

1. Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin, including Limited English Proficiency (LEP);
2. Title VII of the Civil Rights Act of 1964 found at 42 U.S.C. §2000(e) et.seq. which prohibits discrimination on the basis of race, color, religion, national origin, or sex:

3. Title IX of the Education Amendments of 1972, as amended (U.S.C. §§ 1681-1683 and 1685-1686) which prohibits discrimination on the basis of sex;
4. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of disability;
5. Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 621-634), which prohibits discrimination on the basis of age;
6. Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse;
7. Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism;
8. Sections 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§ 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records;
9. Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing;
10. Chapter 213 of the Missouri Revised Statutes which prohibits discrimination on the basis of race, color, religion, national origin, sex, age, and disability.
11. The Americans with Disabilities Act (P. L. 101-336), 42 U. S. C. §12101 et seq., relating to nondiscrimination with respect to employment, public services, public accommodations and telecommunications.
12. Any other nondiscrimination provisions in the specific statute(s) and regulations under which application for federal assistance is being made.
13. The requirements of any other nondiscrimination statute(s) and regulations which may apply to the application.

B. State and Federal Environmental Laws:

1. The Federal Clean Air Act, 42 U.S.C. § 7606, as amended, prohibiting award of assistance by way of grant, loan, or contract to noncomplying facilities.
2. The Federal Water Pollution Control Act, 33 U.S.C. § 1368, as amended, prohibiting award of assistance by way of grant, loan, or contract to noncomplying facilities.
3. The National Environmental Policy Act of 1969, 42 U.S.C. § 4321 et seq., as amended, particularly as it relates to the assessment of the environmental impact of federally assisted projects.
4. The National Historic Preservation Act of 1966, 16 U.S.C. § 470 et seq., as amended, relating to the preservation of historic landmarks.
5. Earthquakes - Seismic Building and Construction Ordinances, §§ 319.200 - 319.207, RSMo (Cum. Supp. 1990), relating to the adoption of seismic design and construction ordinances by certain cities, towns, villages and counties.
6. The Missouri Clean Water Law, Sections 644.006 to 644.141, RSMo.
7. The Missouri Hazardous Waste Management Law, Section, 260.350 to 260.430, RSMo.
8. The Missouri Solid Waste Management Law, Sections 260.200 to 260.245, RSMo.
9. The Missouri Air Conservation Law, Sections 643.101 to 643.190, RSMo.

C. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. §§ 4601 and 4651 et seq., relating to acquisition of interest in real property or any displacement of persons, businesses, or farm operations.

D. The Hatch Act, 5 U.S.C. § 1501 et seq., as amended, relating to certain political activities of certain State and local employees.

E. The Archaeological and Historic Preservation Act of 1974 (Public Law 93-291) relating to potential loss or destruction of significant scientific, historical, or archaeological data in connection with federally assisted activities.

- F. The Wild and Scenic Rivers Act of 1968 (16 U.S.C. § 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
- G. The flood insurance purchase requirements of § 102(a) of the Flood Disaster Protection Act of 1973 (Public Law 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
- H. The Privacy Act of 1974, P.L. 93-579, as amended prohibiting the maintenance of information about any individual in a manner which would violate the provision of the Act.
- I. Public Law 93-348 regarding the protection of human subjects involved in research, development and related activities supported by this award of assistance.
- J. The Laboratory Animal Welfare Act of 1966 (P. L. 89-544), 7 U.S.C. § 2131 et seq., pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
- K. The following additional requirements apply to projects that involve construction:
 - 1. The Davis-Bacon Act, as amended, 40 U.S.C. § 276a et seq., respecting wage rates for federally assisted construction contracts in excess of \$2000.
 - 2. The Copeland (Anti-Kickback) Act, 18 U.S.C. § 874, 40 U.S.C. § 276c.
 - 3. The Contract Work Hours and Safety Standards Act, 40 U.S.C. § 327 et seq.
 - 4. Convict labor shall not be used on construction projects unless by convicts who are on work release, parole, or probation.
 - 5. The Lead-Based Paint Poisoning Prevention Act (42 U. S. C. § 4801 et seq.) which prohibits the use of lead paint in construction or rehabilitation of residence structures.

This content is from the eCFR and is authoritative but unofficial.

Title 43 – Public Lands: Interior

Subtitle A – Office of the Secretary of the Interior

Part 17 Nondiscrimination in Federally Assisted Programs of the Department of the Interior

Subpart A Nondiscrimination on the Basis of Race, Color, or National Origin

- § 17.1 Purpose.
- § 17.2 Application of this part.
- § 17.3 Discrimination prohibited.
- § 17.4 Assurances required.
- § 17.5 Compliance information.
- § 17.6 Conduct of investigations.
- § 17.7 Procedure for effecting compliance.
- § 17.8 Hearings.
- § 17.9 Decisions and notices.
- § 17.10 Judicial review.
- § 17.11 Effect on other regulations; forms and instructions.
- § 17.12 Definitions.

Appendix A to Subpart A of Part 17

Appendix A to Subpart A of Part 17

Appendix B to Subpart A of Part 17

Appendix B to Subpart A of Part 17

Subpart B Nondiscrimination on the Basis of Handicap

- § 17.200 Purpose.
- § 17.201 Application.
- § 17.202 Definitions.
- § 17.203 Discrimination prohibited.
- § 17.204 Assurances required.
- § 17.205 Remedial action, voluntary action, and self-evaluation.
- § 17.206 Designation of responsible employee and adoption of grievance procedures.
- § 17.207 Notification.
- § 17.208 Administrative requirements for small recipients.
- § 17.209 Effect of State or local law or other requirements and effect of employment opportunities.
- § 17.210 Employment practices.
- § 17.211 Reasonable accommodation.
- § 17.212 Employment criteria.

§ 17.213 Pre-employment inquiries.

§§ 17.214-17.215 [Reserved]

§ 17.216 Accessibility.

§ 17.217 Existing facilities.

§ 17.218 New construction.

§ 17.219 [Reserved]

§ 17.220 Preschool, elementary, and secondary education.

§§ 17.221-17.231 [Reserved]

§ 17.232 Postsecondary education.

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§ 17.250 Health, welfare, and social services.

§ 17.251 Drug and alcohol addicts.

§ 17.252 Education of institutionalized persons.

§§ 17.253-17.259 [Reserved]

§ 17.260 Historic Preservation Programs.

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§ 17.280 Enforcement procedures.

Subpart C Nondiscrimination on the Basis of Age

General

§ 17.300 What is the purpose of the Age Discrimination Act of 1975?

§ 17.301 What is the purpose of DOI's age discrimination regulations?

§ 17.302 To what programs or activities do these regulations apply?

§ 17.303 Definitions.

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§ 17.310 Rules against age discrimination.

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§ 17.330 Compliance reviews.

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Subpart D [Reserved]

Subpart E Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Department of the Interior

- § 17.501 Purpose.
- § 17.502 Application.
- § 17.503 Definitions.
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- § 17.510 Self-evaluation.
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- § 17.550 Program accessibility: Existing facilities.
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- §§ 17.552-17.559 *[Reserved]*
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- § 17.570 Compliance procedures.

PART 17—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS OF THE DEPARTMENT OF THE INTERIOR

Editorial Note: Nomenclature changes to part 17 appear at 68 FR 51376, Aug. 26, 2003.

Subpart A—Nondiscrimination on the Basis of Race, Color, or National Origin

Authority: Sec. 602, 78 Stat. 252; 42 U.S.C. 2000d-1; and the laws referred to in Appendix A.

§ 17.1 Purpose.

The purpose of this part is to effectuate the provisions of title VI of the Civil Rights Act of 1964 to the end that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance from the Department of the Interior.

[29 FR 16293, Dec. 4, 1964, as amended at 43 FR 4259, Feb. 1, 1978]

§ 17.2 Application of this part.

- (a) This part applies to any program for which Federal financial assistance is authorized under a law administered by the Department, including programs and activities that are federally-assisted under the laws listed in appendix A to this subpart. It applies to money paid, property transferred, or other Federal financial assistance extended after the effective date of the regulation pursuant to an application approved prior to such effective date. This part does not apply to
 - (1) any Federal financial assistance by way of insurance or guaranty contracts,
 - (2) money paid, property transferred, or other assistance extended before the effective date of this part,
 - (3) any assistance to any individual who is the ultimate beneficiary, or
 - (4) except to the extent described in § 17.3, any employment practice, under any such program, of any employer, employment agency, or labor organization. The fact that a statute under which Federal financial assistance is extended to a program or activity is not listed in appendix A to subpart A shall not mean, if title VI is otherwise applicable, that such program or activity is not covered. Other statutes now in force or hereafter enacted may be added to this list by notice published in the FEDERAL REGISTER.
- (b) In any program receiving Federal financial assistance in the form, or for the acquisition, of real property or an interest in real property, to the extent that rights to space on, over, or under any such property are included as part of the program receiving that assistance, the nondiscrimination requirement of that part shall extend to any facility located wholly or in part of the space.

[29 FR 16293, Dec. 4, 1964, as amended at 38 FR 17975, July 5, 1973; 43 FR 4259, Feb. 1, 1978]

§ 17.3 Discrimination prohibited.

- (a) **General.** No person in the United States shall, on the grounds of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program to which this part applies.
- (b) **Specific discriminatory actions prohibited.**
 - (1) A recipient to which this part applies may not, directly or through contractual or other arrangements, on the grounds of race, color, or national origin:
 - (i) Deny an individual any service, financial aid, or other benefit provided under the program;

- (ii) Provide any service, financial aid, or other benefit to an individual which is different, or is provided in a different manner, from that provided to others under the program;
 - (iii) Subject an individual to segregation or separate treatment in any matter related to his receipt of any service, financial aid, or other benefit under the program;
 - (iv) Restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program;
 - (v) Treat an individual differently from others in determining whether he satisfies any admission, enrollment, quota, eligibility, membership or other requirement or condition which individuals must meet in order to be provided any service, financial aid, or other benefit provided under the program;
 - (vi) Deny an individual an opportunity to participate in the program through the provision of services or otherwise or afford him an opportunity to do so which is different from that afforded others under the program (including the opportunity to participate in the program as an employee but only to the extent set forth in paragraph (c) of this section).
 - (vii) Deny a person the opportunity to participate as a member of a planning or advisory body which is an integral part of the program.
- (2) A recipient, in determining the types of services, financial aid, or other benefits, or facilities which will be provided under any such program or the class of individuals to whom, or the situations in which, such services, financial aid, other benefits or facilities will be provided under any such program, or the class of individuals to be afforded an opportunity to participate in any such program, may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respect individuals of a particular race, color, or national origin.
- (3) In determining the site or location of facilities, a recipient or applicant may not make selections with the purpose or effect of excluding persons from, denying them the benefits of, or subjecting them to discrimination under any program to which this regulation applies, on the grounds of race, color, or national origin; or with the purpose or effect if defeating or substantially impairing the accomplishment of the objectives of the Act or this part.
- (4)
- (i) In administering a program regarding which the recipient has previously discriminated against persons on the grounds of race, color, or national origin, the recipient must take affirmative action to overcome the effects of prior discrimination.
 - (ii) Even in the absence of such prior discrimination, a recipient in administering a program may take affirmative action to overcome the effects of conditions which resulted in limiting participation by persons of a particular race, color or national origin.
- (5) References in this section to services, financial aid, or other benefits provided under a program receiving Federal financial assistance shall be deemed to include any service, financial aid, or other benefit provided in or through a facility provided with the aid of Federal financial assistance.
- (6) The enumeration of specific forms of prohibited discrimination in this paragraph (b) and paragraph (c) of this section does not limit the generality of the prohibition in paragraph (a) of this section.

(c) **Employment practices.**

- (1) Where a primary objective of the Federal financial assistance to a program to which this part applies is to provide employment, a recipient or other party subject to this part shall not, directly or through contractual or other arrangements, subject a person to discrimination on the ground of race, color, or national origin in its employment practices under such program (including recruitment or recruitment advertising, hiring, firing, upgrading, promotion, demotion, transfer, layoff, termination, rates of pay or other forms of compensation or benefits, selection for training or apprenticeship, use of facilities, and treatment of employees). Such recipient shall take affirmative action to insure that applicants are employed, and employees are treated during employment, without regard to their race, color, or national origin. The requirements applicable to construction employment under any such program shall be those specified in or pursuant to Part III of Executive Order 11246, as amended, or any Executive Order which supersedes it.
- (2) The requirements of paragraph (c)(1) of this section apply to programs under laws funded or administered by the Department where a primary objective of the Federal financial assistance is
 - (i) to reduce the unemployment of such individuals or to help them through employment to meet subsistence needs,
 - (ii) to assist such individuals in meeting expenses incident to the commencement or continuation of their education or training, or
 - (iii) to provide work experience which contributes to the education or training of such individuals. Assistance given under the following laws has one of the above purposes as a primary objective: Water Resources Research Act of 1964, title I, 78 Stat. 329, and those statutes listed in appendix A to this subpart where the facilities or employment opportunities provided are limited, or a preference is given, to students, fellows, or other persons in training or related employment.
- (3) Where a primary objective of the Federal financial assistance is not to provide employment, but discrimination on the ground of race, color, or national origin in the employment practices of the recipient or other persons subject to the regulation tends, on the ground of race, color, or national origin, to exclude individuals from participation in, to deny them the benefit of, or to subject them to discrimination under any program to which this regulation applies, the provisions of paragraph (c)(1) of this section shall apply to the employment practices of the recipient or other persons subject to this part, to the extent necessary to assure equality of opportunity to, and nondiscriminatory treatment of, beneficiaries.

- (d) **Benefits for Indians, natives of certain territories, and Alaska natives.** An individual shall not be deemed subjected to discrimination by reason of his exclusion from benefits which, in accordance with Federal law, are limited to Indians, natives of certain territories, or Alaska natives, if the individual is not a member of the class to which the benefits are addressed. Such benefits include those authorized by statutes listed in appendix B to this subpart.

[29 FR 16293, Dec. 4, 1964, as amended at 38 FR 17976, July 5, 1973; 43 FR 4259, Feb. 1, 1978; 68 FR 51376, Aug. 26, 2003]

§ 17.4 Assurances required.

(a) **General.**

- (1) Every application for Federal financial assistance to which this part applies, except an application to which paragraph (b) of this section applies, and every application for Federal financial assistance to provide a facility shall, as a condition to its approval and the extension of any Federal financial assistance pursuant to the application, contain or be accompanied by, an assurance that the program will be conducted or the facility operated in compliance with all requirements imposed by or pursuant to this part. Every award of Federal financial assistance shall require the submission of such an assurance. In the case where the Federal financial assistance is to provide or is in the form of personal property, or real property or interest therein or structures thereon, or improvement of real property or structures, the assurance shall obligate the recipient, or, in the case of a subsequent transfer, the transferee, for the period during which the property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits, or for as long as the recipient retains ownership or possession of the property, whichever is longer. In all other cases the assurance shall obligate the recipient for the period during which Federal financial assistance is extended to the program. In the case where the assistance is sought for the construction of a facility or part of a facility, the assurance shall in any event extend to the entire facility and to facilities operated in connection therewith. The Secretary shall specify the form of the foregoing assurances, and the extent to which like assurances will be required of subgrantees, contractors and subcontractors, transferees, successors in interest, and other participants. Any such assurance shall include provisions which give the United States a right to seek its judicial enforcement.
- (2) In the case where Federal financial assistance is provided in the form of a transfer of real property, structures, or improvements thereon, or interest therein, from the Federal Government, the instrument effecting or recording the transfer shall contain a covenant running with the land assuring nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. Where no transfer of property or interest therein from the Federal Government is involved, but property is acquired or improved with Federal financial assistance, the recipient shall agree to include such covenant in any subsequent transfer of such property. When the property is obtained from the Federal Government, such covenant may also include a condition coupled with a right to be reserved by the Department to revert title to the property in the event of a breach of the covenant where, in the discretion of the Secretary, such a condition and right of reverter is appropriate to the statute under which the real property is obtained and to the nature of the grant and the grantee. In such event if a transferee of real property proposes to mortgage or otherwise encumber the real property as security for financing construction of new, or improvement of existing facilities on such property for the purposes for which the property was transferred, the Secretary may agree, upon request of the transferee and if necessary to accomplish such financing, and upon such conditions as he deems appropriate, to subordinate such right of reversion to the lien of such mortgage or other encumbrance.

(b) Continuing Federal financial assistance.

- (1) Every application by a State or any agency or political subdivision of a State for continuing Federal financial assistance to which this regulation applies shall as a condition to its approval and the extension of any Federal financial assistance pursuant to the application
 - (i) contain or be accompanied by a statement that the program is (or, in the case of a new program, will be) conducted in compliance with all requirements imposed by or pursuant to this part, or a statement of the extent to which it is not, at the time the statement is made, so conducted, and

- (ii) provide or be accompanied by provision for such methods of administration for the program as are found by the Secretary or his designee to give reasonable assurance that the applicant and all recipients of Federal financial assistance under such program will comply with all requirements imposed by or pursuant to this regulation, including methods of administration which give reasonable assurance that any noncompliance indicated in the statement under paragraph (b)(1)(i) of this section will be corrected.
- (2) With respect to some programs which are carried out by States or agencies or political subdivisions of States and which involve continuing Federal financial assistance administered by the Department, there has been no requirement that applications be filed by such recipients. From the effective date of this part no Federal financial assistance administered by this Department will be extended to a State or to an agency or a political subdivision of a State unless an application for such Federal financial assistance has been received from the State or State agency or political subdivision.
- (c) ***Elementary and secondary schools.*** The requirements of paragraph (a) or (b) of this section with respect to any elementary or secondary school or school system shall be deemed to be satisfied if such school or school system
 - (1) is subject to a final order of a court of the United States for the desegregation of such school or school system, and provides an assurance that it will comply with such order, including any future modification of such order, or
 - (2) submits a plan for the desegregation of such school or school system which the responsible official of the Department of Health, Education, and Welfare determines is adequate to accomplish the purposes of the Act and this part within the earliest practicable time and provides reasonable assurance that it will carry out such plan; in any case of continuing Federal financial assistance the responsible official of the Department of Health, Education, and Welfare may reserve the right to redetermine, after such period as may be specified by him, the adequacy of the plan to accomplish the purposes of the Act and this part. In any case in which a final order of a court of the United States for the desegregation of such school or school system is entered after submission of such a plan, such plan shall be revised to conform to such final order, including any future modification of such order.
- (d) ***Assurances from institutions.***
 - (1) In the case of any application for Federal financial assistance to an institution of higher education (including assistance for construction, for research for a special training project, for student assistance, or for another purpose), the assurance required by this section shall extend to admission practices and to all other practices relating to the treatment of students.
 - (2) The assurance required with respect to an institution of higher education, or any other institution, insofar as the assurance relates to the institution's practices with respect to admission or other treatment of individuals as students, or clients of the institution or to the opportunity to participate in the provision of services or other benefits to such individuals, shall be applicable to the entire institution.

[29 FR 16293, Dec. 4, 1964, as amended at 38 FR 17976, July 5, 1973; 68 FR 51376, Aug. 26, 2003]

§ 17.5 Compliance information.

- (a) **Cooperation and assistance.** The Secretary or his designee shall to the fullest extent practicable seek the cooperation of recipients in obtaining compliance with this part and shall provide assistance and guidance to recipients to help them comply voluntarily with this part.
- (b) **Compliance reports.** Each recipient shall keep such records and submit to the Secretary or his designee timely, complete and accurate compliance reports, at such times, and in such form and containing such information, as the Secretary or his designee may determine to be necessary to enable him to ascertain whether the recipient has complied or is complying with this part. In general, recipients should have available for the Department racial and ethnic data showing the extent to which members of minority groups are beneficiaries of federally—assisted programs. In the case in which a primary recipient extends Federal financial assistance to any other recipient, such other recipient shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to carry out its obligations under this part.
- (c) **Access to sources of information.** Each recipient shall permit access by the Secretary or his designee during normal business hours to such of its books, records, accounts, and other sources of information, and its facilities as may be pertinent to ascertain compliance with this part. Where any information required of a recipient is in the exclusive possession of any other agency, institution or person and this agency, institution or person shall fail or refuse to furnish this information, the recipient shall so certify in its report and shall set forth what efforts it has made to obtain the information.
- (d) **Information to beneficiaries and participants.** Each recipient shall make available to participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the program for which the recipient receives Federal financial assistance, and make such information available to them in such manner as the Secretary or his designee finds necessary to apprise such persons of the protections against discrimination assured them by the Act and this part.

[38 FR 17976, July 5, 1973]

§ 17.6 Conduct of investigations.

- (a) **Periodic compliance reviews.** The Secretary or his designee shall from time to time review the practices of recipients to determine whether they are complying with this part.
- (b) **Complaints.** Any person who believes himself or any specific class of individuals to be subjected to discrimination prohibited by this part may by himself or by a representative file with the Secretary a written complaint. A complaint must be filed not later than 180 days from the date of the alleged discrimination, unless the time for filing is extended by the Secretary, or his designee.
- (c) **Investigations.** Whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with this part, a prompt investigation shall be made. The investigation should include, where appropriate, a review of the pertinent practices and policies of the recipient, the circumstances under which the possible noncompliance with this part occurred, and other factors relevant to a determination as to whether the recipient has failed to comply with this part.
- (d) **Resolution of matters.**

- (1) If an investigation pursuant to paragraph (c) of this section indicates a failure to comply with this part, the recipient shall be informed in writing and the matter will be resolved by informal means whenever possible. If it has been determined that the matter cannot be resolved by informal means, action will be taken as provided for in § 17.7.
 - (2) If an investigation does not warrant action pursuant to paragraph (d)(1) of this section, the recipient and complainant, if any, shall be informed in writing.
- (e) ***Intimidatory or retaliatory acts prohibited.*** No recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by section 601 of the act or this part, or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of this part, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

[29 FR 16293, Dec. 4, 1964, as amended at 38 FR 17977, July 5, 1973]

§ 17.7 Procedure for effecting compliance.

- (a) ***General.*** If there appears to be a failure or threatened failure to comply with this part, and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance with this part may be effected by the suspension or termination of or refusal to grant or to continue Federal financial assistance or by any other means authorized by law. Such other means may include, but are not limited to,
- (1) a reference to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States (including other titles of the Act), or any assurance or other contractual undertaking, and
 - (2) any applicable proceeding under State or local law.
- (b) ***Noncompliance with § 17.4.*** If an applicant fails or refuses to furnish an assurance required under § 17.4 or otherwise fails or refuses to comply with a requirement imposed by or pursuant to that section, Federal financial assistance may be refused in accordance with the procedures of paragraph (c) of this section. The Department shall not be required to provide assistance in such a case during the pendency of the administrative proceedings under such paragraph, except that the Department shall continue assistance during the pendency of such proceedings where such assistance is due and payable pursuant to an application therefor approved prior to the effective date of this part.
- (c) ***Termination of or refusal to grant or to continue Federal financial assistance.*** No order suspending, terminating, or refusing to grant or continue Federal financial assistance shall become effective until
- (1) the Secretary or his designee has advised the applicant or recipient of his failure to comply and has determined that compliance cannot be secured by voluntary means,
 - (2) there has been an express finding on the record, after opportunity for hearing, of a failure by the applicant or recipient to comply with a requirement imposed by or pursuant to this part,
 - (3) the action has been approved by the Secretary pursuant to § 17.9(e), and
 - (4) the expiration of 30 days after the Secretary has filed with the committee of the House and the committee of the Senate having legislative jurisdiction over the program involved, a full written report of the circumstances and the grounds for such action. Any action to suspend or terminate or

to refuse to grant or to continue Federal financial assistance shall be limited to the particular political entity, or part thereof, or other applicant or recipient as to whom such finding has been made and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found.

- (d) **Other means authorized by law.** No action to effect compliance by any other means authorized by law shall be taken until
- (1) the Secretary or his designee has determined that compliance cannot be secured by voluntary means,
 - (2) the recipient or other person has been notified of its failure to comply and of the action to be taken to effect compliance, and
 - (3) the expiration of at least 10 days from the mailing of such notice to the recipient or other person. During this period of at least 10 days additional effort shall be made to persuade the recipient or other person to comply with this part and to take such corrective action as may be appropriate.

[29 FR 16293, Dec. 4, 1964, as amended at 38 FR 17977, July 5, 1973]

§ 17.8 Hearings.

- (a) **Opportunity for hearing.** Whenever an opportunity for a hearing is required by § 17.7(c), reasonable notice shall be given by registered or certified mail, return receipt requested, to the affected applicant or recipient. This notice shall advise the applicant or recipient of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and the matters of fact or law asserted as the basis for this action, and either
- (1) fix a date not less than 20 days after the date of such notice within which the applicant or recipient may request of the administrative law judge to whom the matter has been assigned that the matter be scheduled for hearing or
 - (2) advise the applicant or recipient that the matter in question has been set down for hearing at a stated place and time. The time and place so fixed shall be reasonable and shall be subject to change for cause. The complainant, if any, shall be advised of the time and place of the hearing. An applicant or recipient may waive a hearing and submit written information and argument for the record. The failure of an applicant or recipient to request a hearing under this paragraph or to appear at a hearing for which a date has been set shall be deemed to be a waiver of the right to a hearing under section 602 of the act and § 17.7(c) and consent to the making of a decision on the basis of such information as is available.
- (b) **Time and place of hearing.** Hearings shall be held at the Office of Hearings and Appeals of the Department in the Washington, DC, area, at a time fixed by the administrative law judge to whom the matter has been assigned unless he determines that the convenience of the applicant or recipient or of the Department requires that another place be selected. Hearings shall be held before an administrative law judge designated by the Office of Hearings and Appeals in accordance with 5 U.S.C. 3105 and 3344.
- (c) **Right to counsel.** In all proceedings under this section, the applicant or recipient and the Department shall have the right to be represented by counsel.
- (d) **Procedures, evidence, and record**

- (1) The hearing, decision, and any administrative review thereof shall be conducted in conformity with 5 U.S.C. 554-557, and in accordance with such rules of procedure as are proper (and not inconsistent with this section) relating to the conduct of the hearing, giving of notices subsequent to those provided for in paragraph (a) of this section, taking of testimony, exhibits, arguments and briefs, requests for findings, and other related matters. Both the Department and the applicant or recipient shall be entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the officer conducting the hearing at the outset of or during the hearing.
 - (2) Technical rules of evidence shall not apply to hearings conducted pursuant to this part, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary by the officer conducting the hearing. The hearing officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent that the substance thereof is stipulated for the record. All decisions shall be based upon the hearing record and written findings shall be made.
- (e) **Consolidated or joint hearings.** In cases in which the same or related facts are asserted to constitute noncompliance with this part with respect to two or more Federal statutes, authorities, or other means by which Federal financial assistance is extended and to which this part applies or noncompliance with this part and the regulations of one or more other Federal departments or agencies issued under title VI of the act, the Secretary may, by agreement with such other departments or agencies, where applicable, provide for the conduct of consolidated or joint hearings, and for the application to such hearings of rules of procedure not inconsistent with this part. Final decisions in such cases, insofar as this part is concerned, shall be made in accordance with § 17.9.

[29 FR 16293, Dec. 4, 1964, as amended at 38 FR 17977, July 5, 1973]

§ 17.9 Decisions and notices.

- (a) **Initial decision by an administrative law judge.** The administrative law judge shall make an initial decision and a copy of such initial decision shall be sent by registered mail, return receipt requested, to the recipient or applicant.
- (b) **Review of the initial decision.** The applicant or recipient may file his exceptions to the initial decision, with his reasons therefor, with the Director, Office of Hearings and Appeals, within thirty days of receipt of the initial decision. In the absence of exceptions, the Director, Office of Hearings and Appeals, on his own motion within forty-five days after the initial decision, may notify the applicant or recipient that he will review the decision. In the absence of exceptions or a notice of review, the initial decision shall constitute the final decision subject to the approval of the Secretary pursuant to paragraph (f) of this section.
- (c) **Decisions by the Director, Office of Hearings and Appeals.** Whenever the Director, Office of Hearings and Appeals, reviews the decision of a hearing examiner pursuant to paragraph (b) of this section, the applicant or recipient shall be given reasonable opportunity to file with him briefs or other written statements of its contention, and a copy of the final decision of the Director, Office of Hearings and Appeals, shall be given to the applicant or recipient and to the complainant, if any.

- (d) **Decisions on record where a hearing is waived.** Whenever a hearing is waived pursuant to § 17.8(a), a decision shall be made by the Director, Office of Hearings and Appeals on the record and a copy of such decision shall be given in writing to the applicant or recipient and to the complainant, if any.
- (e) **Rulings required.** Each decision of an administrative law judge or the Director, Office of Hearings and Appeals, shall set forth his ruling on each finding, conclusion, or exception presented, and shall identify the requirement or requirements imposed by or pursuant to this part with which it is found that the applicant or recipient has failed to comply.
- (f) **Approval by Secretary.** Any final decision of a hearing examiner or of the Director, Office of Hearings and Appeals, which provides for the suspension or termination of, or the refusal to grant or continue Federal financial assistance, or the imposition of any other sanction available under this part of the act, shall promptly be transmitted to the Secretary, who may approve such decision, may vacate it, or remit or mitigate any sanction imposed.
- (g) **Content of decisions.** The final decision may provide for the suspension or termination of, or refusal to grant or continue Federal financial assistance, in whole or in part, to which this regulation applies, and may contain such terms, conditions, and other provisions as are consistent with and effectuate the purposes of the act and this part, including provisions designed to assure that no Federal financial assistance to which this regulation applies will thereafter be extended to the applicant or recipient determined by such decision to be in default in its performance of an assurance given by it pursuant to this regulation, or to have otherwise failed to comply with this part, unless and until it corrects its noncompliance and satisfies the Secretary that it will fully comply with this part.
- (h) **Post termination proceedings.**
 - (1) An applicant or recipient adversely affected by an order issued under paragraph (g) of this section shall be restored to full eligibility to receive Federal financial assistance if it satisfies the terms and conditions of that order for such eligibility or if it brings itself into compliance with this part and provides reasonable assurance that it will fully comply with this part.
 - (2) Any applicant or recipient adversely affected by an order entered pursuant to paragraph (g) of this section may at any time request the Secretary to restore fully its eligibility to receive Federal financial assistance.
 - (3) If the Secretary denies any such request, the applicant or recipient may submit to the Secretary a request for a hearing in writing, specifying why it believes the Secretary to have been in error. It shall thereupon be given an expeditious hearing, with a decision on the record in accordance with the procedures set forth in subpart I of part 4 of this title. The applicant or recipient shall be restored to such eligibility if it proves at such a hearing that it satisfied the requirements of paragraph (h)(1) of this section.
 - (4) While proceedings under this paragraph are pending, the sanctions imposed by the order issued under paragraph (g) of this section shall remain in effect.

[38 FR 17977, July 5, 1973; 44 FR 54299, Sept. 19, 1979]

§ 17.10 Judicial review.

Action taken pursuant to section 602 of the act is subject to judicial review as provided in section 603 of the act.

[29 FR 16293, Dec. 4, 1964]

§ 17.11 Effect on other regulations; forms and instructions.

- (a) **Effect on other regulations.** All regulations, orders, or like directions heretofore issued by any officer of the Department which impose requirements designed to prohibit any discrimination against individuals on the grounds of race, color, or national origin under any program to which this regulation applies and which authorize the suspension or termination of or refusal to grant or to continue Federal financial assistance to any applicant for or recipient of such assistance for failure to comply with such requirements are hereby superseded to the extent that such discrimination is prohibited by this part, except that nothing in this part shall be deemed to relieve any person of any obligation assumed or imposed under any such superseded regulation, order, instruction, or like direction prior to the effective date of this regulation. Nothing in this regulation, however, shall be deemed to supersede any of the following (including future amendments thereof):
- (1) Executive Orders 10925, 11114 and 11246, as amended and regulations issued thereunder,
 - (2) Executive Order 11063 and regulations issued thereunder, or any other regulations or instructions insofar as such order, regulations, or instructions prohibit discrimination on the grounds of race, color, or national origin in any program or situation to which this part is inapplicable, or prohibit discrimination on any other ground.
- (b) **Forms and instructions.** The Secretary or his designee shall issue and promptly make available to interested persons instructions and procedures for effectuating this part as applied to programs to which this part applies and for which he is responsible.
- (c) **Supervision and coordination.** The Secretary may from time to time assign to such officials of the Department as he deems appropriate, or to officials of other departments or agencies of the Government with the consent of such departments or agencies, responsibilities in connection with the effectuation of the purposes of title VI of the act and this part (other than responsibility for final decision as provided in § 17.9), including the achievement of effective coordination and maximum uniformity within the Department and within the Executive Branch of the Government in the application of title VI of the act and this part to similar programs and in similar situations. Any action taken, determination made or requirement imposed by an official of another department or agency acting pursuant to an assignment of responsibility under this paragraph shall have the same effect as though such action had been taken by the Secretary of the Interior.

[29 FR 16293, Dec. 4, 1964, as amended at 43 FR 4259, Feb. 1, 1978]

§ 17.12 Definitions.

As used in this part:

- (a) The term *act* means the Civil Rights Act of 1964 (Pub. L. 88-352 78 Stat. 241).
- (b) The term *Department* means the Department of the Interior, and includes each of its bureaus and offices.
- (c) The term *Secretary* means the Secretary of the Interior or, except in § 17.9(f), any person to whom he has delegated his authority in the matter concerned.
- (d) The term *United States* means the States of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and the territories and possessions of the United States, and the term "State" means any one of the foregoing.

- (e) The term *Federal financial assistance* includes
- (1) grants and loans of Federal funds,
 - (2) grants or donations of Federal property and interests in property,
 - (3) the detail of Federal personnel
 - (4) the sale or lease of, or the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration or at a nominal consideration or at a consideration which is reduced for the purpose of assisting the recipient or in recognition of the public interest to be served by such sale or lease to the recipient, and
 - (5) any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.
- (f) The terms *program or activity* and *program* mean all of the operations of any entity described in paragraphs (f)(1) through (4) of this section, any part of which is extended Federal financial assistance:
- (1)
 - (i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or
 - (ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;
 - (2)
 - (i) A college, university, or other postsecondary institution, or a public system of higher education; or
 - (ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;
 - (3)
 - (i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—
 - (A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or
 - (B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or
 - (ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or
 - (4) Any other entity which is established by two or more of the entities described in paragraph (f)(1), (2), or (3) of this section.
- (g) The term *facility* includes all or any portion of structures, equipment, or other real or personal property or interests therein, and the provision of facilities includes the construction, expansion, renovation, remodeling, alteration or acquisition of facilities.

- (h) The term *recipient* means any State, political subdivision of any State, or instrumentality of any State or political subdivision, any public or private agency, institution, or organization, or any other entity, or any individual, in any State, to whom Federal financial assistance is extended, directly or through another recipient, including any successor, assign, or transferee thereof, but such term does not include the ultimate beneficiary.
- (i) The term *primary recipient* means any recipient which is authorized or required to extend Federal financial assistance to another recipient.
- (j) The term *applicant* means one who submits an application, request, or plan required to be approved by the head of a bureau or office, or by a primary recipient, as a condition to eligibility for Federal financial assistance, and the term "application" means such an application, request, or plan.
- (k) The term *Office of Hearings and Appeals* refers to a constituent office of the Department established July 1, 1970. 35 FR 12081 (1970).

[29 FR 16293, Dec. 4, 1964, as amended at 38 FR 17978, July 5, 1973; 68 FR 51376, Aug. 26, 2003]

Appendix A to Subpart A of Part 17

Federal financial assistance subject to part 17 includes, but is not limited to, that authorized by the following statutes:

I. *Public Lands and Acquired Lands.*

- (a) Grants and loans of Federal funds.
 - 1. Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181-287).
 - 2. Mineral Leasing Act for Acquired Lands (30 U.S.C. 351-359).
 - 3. Alaska Grazing Act (44 Stat. 1452, 48 U.S.C. 471, et seq.).
 - 4. Proceeds of Certain Land Sales (R.S. sec. 3689, as amended, 31 U.S.C. 711 (17)).
 - 5. Taylor Grazing Act (48 Stat. 1269, as amended, 43 U.S.C. 315 et seq.).
 - 6. Oregon and California Railroad and Coos Bay Wagon Road Grant Lands Act (50 Stat. 874, 43 U.S.C. 1181f).
 - 7. Payment to States for Swamp Lands Erroneously Sold by U.S. (R.S. sec. 3689, as amended, 31 U.S.C. 711 (18)).
 - 8. Alaska Statehood Act, sec. 6(f), (72 Stat. 341, 48 U.S.C. note preceding sec. 21).
- (b) Sale, lease, grant, or other disposition of, or the permission to use, Federal property or any interest in such property at less than fair market value.
 - 1. Materials Act (61 Stat. 681, as amended 30 U.S.C. 601-604).
 - 2. Rights-of-way for Tramroads, Canals, Reservoirs (28 Stat. 635, as amended, 43 U.S.C. 956, 957).
 - 3. Highway Rights-of-way (R.S. sec. 2477 43 U.S.C. 932).
 - 4. Small Tract Act (52 Stat. 609, as amended, 43 U.S.C. 682a-682e).

5. Rights-of-way for Dams, Reservoirs, Water Plants, Canals, etc. (33 Stat. 628, 16 U.S.C. 524).
6. Rights-of-way for Power and Communication Facilities (36 Stat. 1253, as amended, 43 U.S.C. 961).
7. Recreation and Public Purposes Act (44 Stat. 741, as amended, 43 U.S.C. 869–869-4).
8. Stock-Watering Reservoirs (29 Stat. 434, as amended, 43 U.S.C. 952-955).
9. Alaska Housing Authority Act (63 Stat. 60, 48 U.S.C. 484c).
10. Railroad Rights-of-way in Alaska (30 Stat. 409, 48 U.S.C. 411-419).
11. Grants to States in Aid Schools (44 Stat. 1026 as amended, 43 U.S.C. 870).
12. Carey Act (28 Stat. 422, as amended, 43 U.S.C. 641).
13. Airports and Aviation Fields (45 Stat. 728, as amended, 49 U.S.C. 211-214).
14. Special Land Use Permits (R.S. sec. 453, as amended, 43 U.S.C. 2).
15. Rights-of-way for Irrigation and Drainage (26 Stat. 1101, as amended, 43 U.S.C. 946).
16. Rights-of-way for Pipelines to Transport Oil or Natural Gas (41 Stat. 449, as amended, 30 U.S.C. 185).
17. Townsite Laws (R.S. 2380 *et seq.*, as amended, 43 U.S.C. 711 et seq.).
18. Leases of Lands near Springs (43 Stat. 1133, 43 U.S.C. 971).
19. Rights-of-way for Railroads (18 Stat. 482, 43 U.S.C. 934).
20. Grants of Easements (76 Stat. 1129, 40 U.S.C. 319-319c).

II. **Water and Power.**

(a) Grants and loans of Federal funds.

1. Federal Reclamation Program (32 Stat. 388, 43 U.S.C. 391, and Acts amendatory or supplementary thereto).
2. Reservation of Land for Park, Playground, or Community Center (38 Stat. 727, 43 U.S.C. 569).
3. Distribution System Loan Program (69 Stat. 244, as amended, 43 U.S.C. 421a–421d).
4. Rehabilitation and Betterment Loan Program (63 Stat. 724, as amended, 43 U.S.C. 504).
5. Small Reclamation Project Loan Program (70 Stat. 1044, 43 U.S.C. 422a–422k).
6. Assistance to School Districts on Reclamation Projects (62 Stat. 1108, 43 U.S.C. 385a).
7. Payment from Colorado River Dam Fund, Boulder Canyon Project (54 Stat. 776 as amended, 43 U.S.C. 618(c)).
8. Payment on In Lieu of Taxes Lands Acquired Pursuant to Columbia Basin Project Act (57 Stat. 19, 16 U.S.C. 835c-1).
9. Payment in Lieu of Taxes on Land to Trinity County, California (69 Stat. 729).
10. Saline Water Research Program (66 Stat. 328, as amended, 42 U.S.C. 1951).

11. Water User Repayment Obligations on Reclamation Projects (43 Stat. 703, 43 U.S.C. 501, 62 Stat. 273, 66 Stat. 754).

12. Water Resources Research Act (78 Stat. 329).

(b) Sale, lease, grant or other disposition of, or the permission to use, Federal property or any interest in such property at less than fair market value.

1. Townsite Disposal on Reclamation Projects (34 Stat. 116, 43 U.S.C. 566).

2. Transfer of Federal Property in Coulee Dam, Washington (71 Stat. 529, 16 U.S.C. 835c note).

3. Transfer of Federal Property to Boulder City, Nevada (72 Stat. 1726, 43 U.S.C. 617u note).

4. Reservation of Land for Park, Playground, or Community Center (38 Stat. 727, 43 U.S.C. 569).

5. Saline Water Research Program-Donation of Laboratory Equipment (72 Stat. 1793, 42 U.S.C. 1892).

6. Reclamation Program-Conveyance of Land to School Districts (41 Stat. 326, 43 U.S.C. 570).

7. Recreation and Public Purposes Program (44 Stat. 741, as amended, 43 U.S.C. 869-869a).

8. Dedication of Land for Public Purposes, Page. Arizona (72 Stat. 1686, 1688).

9. Removal of Sand, Gravel, and Other Minerals, and Building Materials from Reclamation Project Lands (53 Stat. 1196, as amended, 43 U.S.C. 387).

III. *Mineral Resources.* Grants and loans of Federal funds.

1. Control of Coal Mine Fires (68 Stat. 1009, 30 U.S.C. 551-558 *et seq.*)

2. Anthracite Mine Drainage and Flood Control and Sealing of Abandoned Mines and Filling Voids (69 Stat. 352, as amended, 30 U.S.C. 571-576).

3. Sealing and filling of voids in abandoned coal mines, reclamation of surface mine areas, and extinguishing mine fires (79 Stat. 13, as amended, 40 U.S.C., App., 205).

IV. *Fish and Wildlife.*

(a) Grants of Federal funds.

1. Pittman-Robertson Act (50 Stat. 917, as amended, 16 U.S.C. 669).

2. Dingell-Johnson Act (64 Stat. 430, 16 U.S.C. 777).

3. Sharing of Refuge Revenues (49 Stat. 383, as amended, 16 U.S.C. 715s).

4. Aid to Alaska (Section 6(e) of the Alaska Statehood Act, 72 Stat. 340, and Act of February 28, 1944, 58 Stat. 101, 16 U.S.C. 631e).

5. Anadromous Fish Act of 1965 (79 Stat. 1125, 16 U.S.C. 757a-757f).

6. Aid to Education (70 Stat. 1126, 16 U.S.C. 760d).

7. Jellyfish Act of 1966 (80 Stat. 1149, 16 U.S.C. 1201-1205).

(b) Sale, lease, grant, or other disposition of, or the permission to use, Federal property or any interest in such property at less than fair market value.

1. Cooperative Research and Training Program for Fish and Wildlife Resources (74 Stat. 733, 16 U.S.C. 753a)
 2. Protection and Conservation of Bald and Golden Eagles (54 Stat. 251, as amended 16 U.S.C. 668a).
 3. Wildlife Land Transfers (sec. 8 of Colorado River Storage Project Act of 1956, 70 Stat. 110, 43 U.S.C. 620g)
 4. Fish and Wildlife Coordination Act (48 Stat. 401, as amended, 16 U.S.C. 661-664).
- (c) Furnishing of services of a type for which the recipient would otherwise pay.
1. Lamprey Eradication Program (60 Stat. 930, as amended, 16 U.S.C. 921)
 2. Cooperative Research and Training Program for Fish and Wildlife Resources (74 Stat. 733, 16 U.S.C. 753a)
 3. Fish and Wildlife Coordination Act (48 Stat. 401, as amended, 16 U.S.C. 661 et seq.).

V. *Parks and Territories.*

- (a) Grants and loans of Federal funds.
1. Payments to School Districts—Yellowstone National Park (62 Stat. 338, 16 U.S.C. 40a).
 2. Payments in Lieu of Taxes—Grand Teton National Park (64 Stat. 851, 16 U.S.C. 406d-3).
 3. Historic Preservation Act of 1966 (80 Stat. 915, 16 U.S.C. 47a).
 4. Bureau of Outdoor Recreation (77 Stat. 49, 16 U.S.C. 460I).
 5. Revised Organic Act of the Virgin Islands (68 Stat. 497, as amended, 48 U.S.C. 1541-1644).
 6. Guam Rehabilitation Act (77 Stat. 302).
 7. Organic Act of Guam (64 Stat. 384 as amended, 48 U.S.C. 1421-1425 except sec. 9(a), 48 U.S.C. 1422c(a)).
 8. Guam Agricultural Act (P.L. 88-584, 78 Stat. 926).
 9. Outdoor Recreation Programs (78 Stat. 897, as amended, 16 U.S.C. 460I—460I-11).
- (b) Sale, lease, grant or other disposition of, or the permission to, use Federal property or any interest in such property at less than fair market value.
1. Puerto Rico Federal Relations Act (39 Stat. 954, 48 U.S.C. 748).
 2. Virgin Islands Corporation Act (63 Stat. 350, as amended, 48 U.S.C. 1407 et seq.).
 3. Territorial Submerged Lands Act (77 Stat. 338, 48 U.S.C. 1701-1704).
 4. Organic Act of Guam (64 Stat. 392, 48 U.S.C. 1421f(c)).
- (c) Furnishing of services by the Federal Government of a type for which the recipient would otherwise pay.
1. Bureau of Outdoor Recreation (77 Stat. 49, 16 U.S.C. 460I).

VI. *Indian Affairs.*

(a) Grants and loans of Federal funds.

1. Menominee County, Wis. Educational Grants (76 Stat. 53).

(b) Sale, lease, grant, or other disposition of or the permission to use, Federal property or any interest in such property at less than fair market value.

1. Conveyance of School Property (67 Stat. 41, as amended, 25 U.S.C. 293a).

2. Adult Vocational Training Act (70 Stat. 986, 25 U.S.C. 309).

VII. **General.** 1. Department Projects under the Public Works Acceleration Act (76 Stat. 541, 42 U.S.C. 2641-2643).

2. Grants for Support of Scientific Research (72 Stat. 1793, 42 U.S.C. 1891-1893).

3. Special Use Permits (R.S. sec. 441, as amended, 43 U.S.C. 1457).

4. Land and Water Conservation Fund Act of 1964 (Pub. L. 88-578, 78 Stat. 897).

[29 FR 16293, Dec. 4, 1964, as amended at 38 FR 17978, July 5, 1973]

Appendix B to Subpart A of Part 17

The following statutes authorize Federal financial assistance limited to individuals of a particular race, color, or national origin

I. **Indians and Alaska Natives.**

1. Snyder Act (42 Stat. 208, 25 U.S.C. 13).

2. Adult Vocational Training Act (70 Stat. 986, 25 U.S.C. 309).

3. Vocational and Trade School Act (48 Stat. 986, 25 U.S.C. 471)

4. Johnson-O'Malley Act (48 Stat. 596, as amended, 25 U.S.C. 452-53)

5. Revolving Fund for Loan to Indians (48 Stat. 986, 25 U.S.C. 470).

6. Revolving Fund for Loans to Tribes (77 Stat. 301).

7. Conveyance of Buildings, Improvements, or Facilities to Tribes (70 Stat. 1057, 25 U.S.C. 443a).

8. Alaska Reindeer Act (50 Stat. 900, 48 U.S.C. 250-250p)

9. Disposals to Alaskan Natives (44 Stat. 629, 48 U.S.C. 355a and 355c).

II. **Natives of Certain Territories.**

1. Acceptance of Samoan Cession Agreement (45 Stat. 1253, as amended, 48 U.S.C. 1661).

2. Samoan Omnibus Act (76 Stat. 586, 48 U.S.C. 1666)

3. Guam Organic Act (64 Stat. 387, 48 U.S.C. 1422c).

[29 FR 16293, Dec. 4, 1964, as amended at 68 FR 51376, Aug. 26, 2003]

Subpart B—Nondiscrimination on the Basis of Handicap

Authority: 29 U.S.C. 794.

Source: 47 FR 29546, July 7, 1982, unless otherwise noted.

§ 17.200 Purpose.

The purpose of this subpart is to implement section 504 of the Rehabilitation Act of 1973 and its subsequent amendments, which are designed to eliminate discrimination on the basis of handicap in any program or activity receiving Federal financial assistance.

§ 17.201 Application.

This subpart applies to each recipient of Federal financial assistance from the Department of the Interior and to each program or activity that receives such assistance.

§ 17.202 Definitions.

As used in this subpart, the term:

- (a) **The Act** means the Rehabilitation Act of 1973, Public Law 93-112, as amended by the Rehabilitation Act Amendments of 1974, Public Law 93-516, and the Rehabilitation, Comprehensive Service, and Developmental Disabilities Act of 1978, Public Law 95-602, 29 U.S.C. 700 *et seq.*
- (b) **Section 504** means section 504 of the Act.
- (c) **Education of the Handicapped Act** means that statute as amended by the Education for All Handicapped Children Act of 1975, Public Law 94-142, 20 U.S.C. 1401 *et seq.*
- (d) **Department** means the Department of the Interior.
- (e) **Director** means the Director of the Office for Equal Opportunity of the Department.
- (f) **Recipient** means any State or its political subdivision, any instrumentality of a State or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance.
- (g) **Applicant for assistance** means one who submits an application, request, or plan required to be approved by a Department official or by a recipient as a condition to becoming a recipient.
- (h) **Federal financial assistance** means any grant, cooperative agreement, loan, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which the Department provides or otherwise makes available assistance in the form of:
 - (1) Funds;
 - (2) Services of Federal personnel; or
 - (3) Real and personal property or any interest in or use of such property, including:

- (i) Easements, transfers or leases of such property for less than fair market value or for reduced consideration; and
- (ii) Proceeds from a subsequent transfer or lease of such property if the Federal share of its fair market value is not returned to the Federal Government.

(i) **Facility** means all or any portion of buildings, structures, equipment, roads, walks, parking lots, outdoor spaces, including those used for recreation, park sites, developed sites, or other real or personal property or interest in such property.

(j) **Handicapped person.**

(1) Handicapped person means any person who

- (i) has a physical, mental or sensory impairment which substantially limits one or more major life activities,
- (ii) has a record of such an impairment, or
- (iii) is regarded as having such an impairment.

(2) As used in paragraph (j)(1)(i) of this section, the phrase:

(i) **Physical, mental or sensory impairment** means

- (A) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or
- (B) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical, mental or sensory impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addiction, and alcoholism.

(ii) **Major life activities** means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(iii) **Has a record of such an impairment** means has a history of, or has been misclassified as having a mental, physical or sensory impairment that substantially limits one or more major life activities.

(iv) **Is regarded as having an impairment** means:

- (A) Has a physical, mental or sensory impairment that does not substantially limit major life activities but that is treated by a recipient as constituting such a limitation;
- (B) Has a physical, mental or sensory impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or
- (C) Has none of the impairments defined in paragraph (j)(2)(i) of this section but is treated by a recipient as having such an impairment.

(k) **Qualified handicapped person** means:

- (1) With respect to employment, a handicapped person who, with reasonable accommodation, can perform the essential functions of the job in question. Insofar as this part relates to employment of handicapped persons, the term "handicapped person" does not include any individual who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents such individual from performing the duties of the job in question or whose employment, by reason of such current alcohol or drug abuse, would constitute a direct threat to property or the safety of others.
- (2) With respect to public preschool, elementary, secondary, or adult education services, a handicapped person
 - (i) of an age during which nonhandicapped persons are provided such services,
 - (ii) of any age during which it is mandatory under State law to provide such services to handicapped persons, or
 - (iii) to whom a State is required to provide a free appropriate public education under section 612 of the Education of the Handicapped Act.
- (3) With respect to postsecondary and vocational education services, a handicapped person who meets the academic and technical standards requisite to admission or participation in the recipient's education program or activity.
- (4) With respect to services, a handicapped person who meets the essential eligibility requirements for the receipt of such services.

(l) **Handicap** means any condition or characteristic that renders a person a handicapped person as defined in paragraph (j)(2)(i) of this section.

(m) **Integrated setting** means that whenever possible, the recipient should make its aid, benefits, or services available to the handicapped in the same setting and under similar circumstances as are available to the nonhandicapped.

(n) **Ultimate beneficiary** means one among a class of persons who are entitled to benefit from, or otherwise participate in, programs or activities receiving Federal financial assistance and to whom the protections of this subpart extend. The ultimate beneficiary class may be the general public or some narrower group of persons.

(o) **Advisory Council** means the Advisory Council on Historic Preservation.

(p) **ATBCB** means the Architectural and Transportation Barriers Compliance Board, an agency empowered by the Architectural Barriers Act of 1968 (Pub. L. 90-480) to establish accessibility standards under section 502.

(q) **Program or activity** means all of the operations of any entity described in paragraphs (q)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)

(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)

- (i) A college, university, or other postsecondary institution, or a public system of higher education; or
- (ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3)

- (i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—
 - (A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or
 - (B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or
 - (ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or
- (4) Any other entity which is established by two or more of the entities described in paragraph (q)(1), (2), or (3) of this section.

[47 FR 29546, July 7, 1982, as amended at 68 FR 51377, Aug. 26, 2003]

§ 17.203 Discrimination prohibited.

- (a) **General.** No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives Federal financial assistance.
- (b) **Discriminatory actions prohibited.**
 - (1) A recipient, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap:
 - (i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;
 - (ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;
 - (iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective as that provided to others;
 - (iv) Provide different or separate aids, benefits or services to handicapped persons or to any class of handicapped persons unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

- (v) Aid or perpetuate discrimination against a qualified handicapped person by providing significant assistance to an agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, or services to beneficiaries of the recipient's program or activity;
 - (vi) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or
 - (vii) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.
- (2) Aids, benefits, and services, to be equally effective, are not required to produce the identical result of level of achievement for handicapped and nonhandicapped persons, but must afford handicapped persons equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement, in the most integrated setting appropriate to the person's needs.
- (3) Despite the existence of separate or different aid, benefits, or services, a recipient may not deny a qualified handicapped person the opportunity to participate in all aid, benefits, or services covered by this subpart that are not separate or different.
- (4) A recipient may not, directly or through contractual or other arrangements, utilize criteria or methods of administration
- (i) that have the effect of subjecting qualified handicapped persons to discrimination on the basis of handicap,
 - (ii) that have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the recipient's program or activity with respect to handicapped persons, or
 - (iii) that perpetuate the discrimination of another recipient if both recipients are subject to common administrative control or are agencies of the same State.
- (5) In determining the site or location of a facility, an applicant for assistance or a recipient may not make selections
- (i) that have the effect of excluding handicapped persons from, denying them the benefits of, or otherwise subjecting them to discrimination under any program or activity that receives Federal financial assistance or
 - (ii) that have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the program or activity with respect to handicapped persons.
- (6) As used in this section, the aid, benefit, or services provided under a program or activity receiving Federal financial assistance includes any aid, benefit, or service provided in or through a facility that has been constructed, expanded, altered, leased or rented, or otherwise acquired, in whole or in part, with Federal financial assistance for the period during which the facility is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.
- (7) Nothing in this section is to be construed as affecting the acquisition of historic sites or wilderness areas.

- (c) **Aid, benefits, or services limited by Federal law.** The exclusion of nonhandicapped persons from aid, benefits, or services limited by Federal statute or Executive Order to handicapped persons or the exclusion of a specific class of handicapped persons from aid, benefits, or services limited by Federal statute or Executive Order to a different class of handicapped persons is not prohibited by this subpart.
- (d) Recipients shall take appropriate steps to insure that communications with their applicants, employees, and beneficiaries are available to persons with impaired vision and hearing.

[47 FR 29546, July 7, 1982, as amended at 68 FR 51377, Aug. 26, 2003]

§ 17.204 Assurances required.

- (a) **Assurances.** An applicant for Federal financial assistance to which this subpart applies shall provide assurances, in accordance with OMB Circular A-102, that the program or activity will be operated in compliance with this subpart. An applicant may incorporate these assurances by reference in subsequent applications to the Department.
- (b) **Duration of obligation.**
 - (1) In the case of Federal financial assistance extended in the form of real property or to provide real property or structures on the property, the assurance will obligate the recipient or, in the case of a subsequent transfer, the transferee, for the period during which the real property or structures are used for the purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.
 - (2) In the case of Federal financial assistance extended to provide personal property, the assurance will obligate the recipient for the period during which it retains ownership or possession of the property.
 - (3) In all other cases the assurance will obligate the recipient for the period during which Federal financial assistance is extended.
- (c) **Covenants.**
 - (1) Where Federal financial assistance is provided in the form of real property or interest in the property from the Department, the instrument effecting or recording this transfer shall contain a covenant running with the land to assure nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.
 - (2) Where no transfer of property is involved but property is purchased or improved with Federal financial assistance, the recipient shall agree to include the covenant described in paragraph (c)(1) of this section in the instrument effecting or recording any subsequent transfer of the property.
 - (3) Where Federal financial assistance is provided in the form of real property or interest in the property from the Department, the covenant shall unless prohibited by the conveyance authority, also include a condition coupled with a right to be reserved by the Department to revert title to the property in the event of a breach of the covenant. If a transferee of real property proposes to mortgage or otherwise encumber the real property as security for financing construction of new, or improvement of existing, facilities on the property for the purposes for which the property was transferred, the Director may, upon request of the transferee and if necessary to accomplish such financing and upon such conditions as he or she deems appropriate, agree to forbear the exercise of such right to revert title for so long as the lien of such mortgage or other encumbrance remains effective.

- (4) Every application by a State or any agency or political subdivision of a State for continuing Federal financial assistance shall as a condition to its approval and the extension of any Federal financial assistance pursuant to the application
 - (i) contain or be accompanied by a statement that the program or activity is (or, in the case of a new program, will be) conducted in compliance with all requirements imposed by or pursuant to this subpart, or a statement of the extent to which it is not, at the time the statement is made, so conducted, and
 - (ii) provide or be accompanied by provision for such methods of administration for the program or activity as are found by the Secretary or his designee to give reasonable assurance that the applicant and all recipients of Federal financial assistance will comply with all requirements imposed by or pursuant to this regulation, including methods of administration which give reasonable assurance that any noncompliance indicated in the statement under paragraph (c)(4)(i) of this section will be corrected.

§ 17.205 Remedial action, voluntary action, and self-evaluation.

(a) **Remedial action.**

- (1) If the Director finds that a recipient has discriminated against persons on the basis of handicap in violation of section 504 or this subpart, the recipient shall take such remedial action as the Director deems necessary to overcome the effects of the discrimination.
- (2) Where a recipient is found to have discriminated against persons on the basis of handicap in violation of section 504 or this subpart and where another recipient exercises control over the recipient that has discriminated, the Director, where appropriate, may require either or both recipients to take remedial action.
- (3) The Director may, where necessary to overcome the effects of discrimination in violation of section 504 or this subpart, require a recipient to take remedial action
 - (i) with respect to handicapped persons who are no longer participants in the recipient's program or activity but who were participants in the program when such discrimination occurred or
 - (ii) with respect to handicapped persons who would have been participants in the program or activity had the discrimination not occurred.

(b) **Voluntary action.** A recipient may take steps, in addition to any action that is required by this subpart, to overcome the effects of conditions that resulted in limited participation in the recipient's program or activity by qualified handicapped persons.

(c) **Self-evaluation.**

- (1) A recipient shall, within one year of the effective date of this subpart:
 - (i) Evaluate, with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons, its current policies and practices and the effects thereof that do not or may not meet the requirements of this subpart;
 - (ii) Modify, after consultation with interested persons, including handicapped persons or organizations representing handicapped persons, any policies and practices that do not meet the requirements of this subpart; and

- (iii) Take, after consultation with interested persons, including handicapped persons or organizations representing handicapped persons, appropriate remedial steps to eliminate the effects of any discrimination that resulted from adherence to these policies and practices.
- (2) A recipient that employs fifteen or more persons shall, for at least three years following completion of the evaluation required under paragraph (c)(1) of this section, maintain on file, make available for public inspection, and provide to the Director upon request:
 - (i) A list of the interested persons consulted,
 - (ii) a description of areas examined and any problems identified, and
 - (iii) a description of any modifications made and of any remedial steps taken.
- (3) A recipient, whose application is approved after the effective date of this regulation, shall within one year of receipt of the Federal financial assistance, be required to comply with the provisions of this section.

§ 17.206 Designation of responsible employee and adoption of grievance procedures.

- (a) *Designation of responsible employee.* A recipient that employs fifteen or more people shall designate at least one person to coordinate efforts to comply with this subpart.
- (b) *Adoption of grievance procedures.* A recipient that employs fifteen or more people shall adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by this subpart. Such procedures need not be established with respect to complaints from applicants for employment or from applicants for admission to postsecondary educational institutions.

§ 17.207 Notification.

- (a) A recipient that employs fifteen or more people shall take appropriate initial and continuing steps to notify participants, beneficiaries, applicants, and employees, including those with impaired vision or hearing, the mentally retarded, the learning disabled, and any other disability that impairs the communication process, and unions or professional organizations holding collective bargaining or professional agreements with the recipient, that it does not discriminate on the basis of handicap in violation of section 504 and this subpart. The notification shall state, where appropriate, that the recipient does not discriminate in admission or access to, or treatment or employment in, its programs or activities. The notification shall also include an identification of the responsible employee designated pursuant to § 17.206(a). A recipient shall make the initial notification required by this paragraph within 90 days of the effective date of this subpart. Methods of initial and continuing notification may include the posting of notices in recipients' publications, and distribution of memoranda or other written communications.
- (b) If a recipient publishes or uses recruitment materials or publications containing general information that it makes available to participants, beneficiaries, applicants, or employees, it shall include in those materials or publications a statement of the policy described in paragraph (a) of this section. A recipient may meet the requirement of this paragraph either by including appropriate inserts in existing materials and publications or by revising and reprinting the materials and publications.

§ 17.208 Administrative requirements for small recipients.

The Director may require any recipient with fewer than fifteen employees, or any class of such recipients, to comply with §§ 17.206 and 17.207, in whole or in part, when the Director finds a violation of this subpart or finds that such compliance will not significantly impair the ability of the recipient or class of recipients to provide benefits or services.

§ 17.209 Effect of State or local law or other requirements and effect of employment opportunities.

- (a) The obligation to comply with this subpart is not obviated or alleviated by the existence of any State or local law or other requirement that, on the basis of handicap, imposes prohibitions or limits upon the eligibility of qualified handicapped persons to receive services or to practice any occupation or profession.
- (b) The obligation to comply with this subpart is not obviated or alleviated because employment opportunities in any occupation or profession are or may be more limited for handicapped persons than for nonhandicapped persons.

§ 17.210 Employment practices.

- (a) **General.**
 - (1) No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity to which this subpart applies.
 - (2) A recipient that receives assistance under the Education of the Handicapped Act shall take positive steps to employ and advance in employment qualified handicapped persons in programs or activities assisted under the Act.
 - (3) A recipient shall make all decisions concerning employment under any program or activity to which this subpart applies in a manner which insures that discrimination on the basis of handicap does not occur, and may not limit, segregate, or classify applicants or employees in any way that adversely affects their opportunities or status because of handicap.
 - (4) A recipient may not participate in a contractual or other relationship that has the effect of subjecting qualified handicapped applicants or employees to discrimination prohibited by this subpart. The relationships referred to in this subparagraph include relationships with employment and referral agencies, with labor unions, with organizations providing or administering fringe benefits to employees of the recipient, and with organizations providing training and apprenticeships.
- (b) **Specific activities.** The provisions of this subpart apply to:
 - (1) Recruitment, advertising, and the processing of applications for employment;
 - (2) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;
 - (3) Rates of pay or any other form of compensation and changes in compensation;
 - (4) Job assignments, job classifications, organizational structures, position descriptions, lines of progressions, and seniority lists;
 - (5) Leaves of absence, sick leave, or any other leave;

- (6) Fringe benefits available by virtue of employment, whether or not administered by the recipient;
 - (7) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;
 - (8) Employer-sponsored activities, including those that are social or recreation; and
 - (9) Any other term, condition, or privilege of employment, such as granting awards, recognition and/or monetary recompense for money-saving suggestions or superior performance.
- (c) A recipient's obligation to comply with this subpart is not affected by any inconsistent term of any collective bargaining agreement to which it is a party.

§ 17.211 Reasonable accommodation.

- (a) A recipient shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified handicapped applicant or employee unless the recipient can demonstrate that the accommodation would impose an undue hardship on the operation of its program or activity.
- (b) Reasonable accommodation may include but is not limited to:
- (1) Making facilities used by employees readily accessible to and usable by handicapped persons, and
 - (2) job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, the provision of readers or interpreters, and other similar actions. This list is neither all inclusive nor meant to suggest that employers must follow all the actions listed.
- (c) In determining pursuant to paragraph (a) of this section whether an accommodation would impose an undue hardship on the operation of a recipient's program or activity, factors to be considered include:
- (1) The overall size of the recipient's program or activity with respect to number of employees, number and type of facilities, and size of budget;
 - (2) The type of the recipient's operations, including the composition and structure of the recipient's workforce; and
 - (3) The nature and cost of the accommodation needed.
- (d) A recipient may not deny any employment opportunity to a handicapped employee or applicant if the basis for denial is the need to make reasonable accommodation to the physical or mental limitations of the employee or applicant.

§ 17.212 Employment criteria.

- (a) A recipient may not make use of any employment test or other selection criterion that screens out or tends to screen out handicapped persons or any class of handicapped persons unless it can be demonstrated to the Director that
- (1) the test score or other selection criterion, as used by the recipient, is shown to be job-related for the position in question, and
 - (2) alternative job-related tests or criteria that do not screen out or tend to screen out as many handicapped persons are not shown by the Director to be available.

- (b) A recipient shall select and administer tests concerning employment so as best to ensure that, when administered to an applicant or employee who has a handicap that impairs sensory, manual, or speaking skills the test results accurately reflect the applicant's or employee's job skills, aptitude, or whatever other factor the test purports to measure, rather than reflecting the applicant's or employee's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).
- (c) All job qualifications must be shown to be directly related to the job in question.

§ 17.213 Pre-employment inquiries.

- (a) Except as provided in paragraphs (b) and (c) of this section, a recipient may not conduct a pre-employment medical examination or make a pre-employment inquiry as to whether the applicant is a handicapped person or as to the nature or severity of a handicap. A recipient may, however, make a pre-employment inquiry into an applicant's ability to perform job-related functions.
- (b) When a recipient is taking remedial action to correct the effects of past discrimination pursuant to § 17.205(a), when a recipient is taking voluntary action to overcome the effects of conditions that resulted in limited participation in its federally assisted program or activity pursuant to § 17.205(b), or when a recipient is taking affirmative action pursuant to section 503 of the Act, the recipient may invite applicants for employment to indicate whether and to what extent they are handicapped, provided that:
 - (1) The recipient states clearly on any written questionnaire used for this purpose, or makes clear orally if no written questionnaire is used, that the information requested is intended for use solely in connection with its remedial action obligations or its voluntary or affirmative action efforts.
 - (2) The recipient states clearly that the information is being requested on a voluntary basis, that it will be kept confidential as provided in paragraph (d) of this section, that refusal to provide it will not subject the applicant or employee to any adverse treatment, and that it will be used only in accordance with this subpart.
 - (3) The recipient must communicate with the applicant in a manner that will ensure that the applicant understands clearly the reasons for the recipient's questions.
- (c) Nothing in this section shall prohibit a recipient from conditioning an offer of employment on the results of a medical examination conducted prior to the employee's entrance on duty, provided that:
 - (1) All entering employees are subjected to such an examination regardless of handicap, and
 - (2) the results of such an examination are used only in accordance with the requirements of this subpart.
- (d) Information obtained in accordance with this section as to the medical condition or history of the applicant shall be collected and maintained on separate forms that shall be accorded confidentiality as medical records, except that:
 - (1) Supervisors and managers may be informed regarding restrictions on the work or duties of handicapped persons and regarding necessary accommodations;
 - (2) First aid and safety personnel may be informed, where appropriate, if the condition might require emergency treatment;
 - (3) Government officials investigating compliance with the Act shall be provided relevant information upon request.

§§ 17.214-17.215 [Reserved]

§ 17.216 Accessibility.

No handicapped person shall, because a recipient's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity to which this subpart applies.

§ 17.217 Existing facilities.

- (a) **Accessibility.** A recipient shall operate each program or activity so that when each part is viewed in its entirety it is readily accessible to and usable by handicapped persons. This paragraph does not require a recipient to make each of its existing facilities or every part of a facility accessible to and usable by handicapped persons.
- (b) **Methods.** A recipient may comply with the requirements of paragraph (a) of this section through such means as redesigning of equipment, reassignment of classes or other services to accessible buildings, assignment of aides to beneficiaries, delivery of services at alternate accessible sites, alterations of existing facilities and construction of new facilities in conformance with the requirements of § 17.218, or any other methods that result in making its program or activity accessible to handicapped persons. A recipient is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with paragraph (a) of this section. In choosing among available methods for meeting the requirement of paragraph (a) of this section, a recipient shall give priority to those methods that serve handicapped persons in the most integrated setting appropriate.
- (c) **Small recipients.** If a recipient with fewer than fifteen employees that provides services finds, after consultation with a handicapped person seeking its services, that there is no method of complying with paragraph (a) of this section other than making a significant alteration in its existing facilities, the recipient may, as an alternative, refer the handicapped person to other providers of those services whose facilities are accessible.
- (d) **Time period.** A recipient shall comply with the requirement of paragraph (a) of this section within sixty days of the effective date of this subpart except that where structural changes in facilities are necessary, such changes shall be made as expeditiously as possible, but in no event later than three years after the effective date of this subpart. New recipients receiving Federal financial assistance shall comply with the requirement of paragraph (a) of this section, except that where structural changes in facilities are necessary, such changes shall be made as expeditiously as possible, but in no event later than three years after the date of approval of the application.
- (e) **Transition plan.** In the event that structural changes to facilities are necessary to meet the requirement of paragraph (a) of this section a recipient shall develop, within one year of the effective date of this subpart, a transition plan setting forth the steps necessary to complete such changes. New recipients, receiving financial assistance after the effective date of this regulation, shall develop a transition plan within one year of receipt of the financial assistance. The plan shall be developed with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons. A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum:
 - (1) Identify physical obstacles in the recipient's facilities that limit the accessibility of its program or activity to handicapped persons;
 - (2) Describe in detail the methods that will be used to make the facilities accessible and usable;

- (3) Specify the schedule for taking the steps necessary to achieve full accessibility under paragraph (a) of this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and
- (4) Indicate the person responsible for implementation of the plan.
- (f) **Notice.** The recipient shall adopt and implement procedures to insure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of services, activities, and facilities that are accessible to and usable by handicapped persons.

[47 FR 29546, July 7, 1982, as amended at 68 FR 51377, Aug. 26, 2003]

§ 17.218 New construction.

- (a) **Design and construction.** Each facility or part of a facility constructed by, on behalf of, or for the use of a recipient shall be designed and constructed in such manner that the facility or part of the facility is readily accessible to and usable by handicapped persons, if the construction was commenced after the effective date of this subpart.
- (b) **Alteration.** Each facility or part of a facility which is altered by, on behalf of, or for the use of a recipient after the effective date of this subpart, in a manner that affects or could affect the usability of the facility or part of the facility shall, to the maximum extent feasible, be altered in such manner that the altered portion of the facility is readily accessible to and usable by handicapped persons.
- (c) **Conformance with Uniform Federal Accessibility Standards.**
 - (1) Effective as of August 15, 1990, design, construction, or alteration of buildings in conformance with sections 3-8 of the Uniform Federal Accessibility Standards (UFAS) (appendix A to 41 CFR subpart 101-19.6) shall be deemed to comply with the requirements of this section with respect to those buildings. Departures from particular technical and scoping requirements of UFAS by the use of other methods are permitted where substantially equivalent or greater access to and usability of the building is provided.
 - (2) For purposes of this section, section 4.1.6(1)(g) of UFAS shall be interpreted to exempt from the requirements of UFAS only mechanical rooms and other spaces that, because of their intended use, will not require accessibility to the public or beneficiaries or result in the employment or residence therein of persons with physical handicaps.
 - (3) This section does not require recipients to make building alterations that have little likelihood of being accomplished without removing or altering a load-bearing structural member.

[47 FR 29546, July 7, 1982, as amended at 55 FR 28912, July 16, 1990]

§ 17.219 [Reserved]

§ 17.220 Preschool, elementary, and secondary education.

This section applies to preschool, elementary, secondary, and adult education programs or activities that receive Federal financial assistance, and to recipients that operate, or that receive Federal financial assistance for the operation of such programs or activities. For the purposes of this section, recipients shall comply with the Section 504 requirements promulgated by the Department of Education at 34 CFR part 104, subpart D.

§§ 17.221-17.231 [Reserved]

§ 17.232 Postsecondary education.

This section applies to postsecondary education and activities, including postsecondary vocational education programs or activities, that receive Federal financial assistance and to recipients that operate, or that receive Federal financial assistance for the operation of such programs or activities. For the purposes of this section, all recipients shall comply with the section 504 requirements promulgated by the Department of Education at 34 CFR part 104, subpart E.

§§ 17.233-17.249 [Reserved]

§ 17.250 Health, welfare, and social services.

This subpart applies to health, welfare, and other social service programs or activities that receive Federal financial assistance and to recipients that operate, or that receive Federal financial assistance for the operation of such programs or activities.

- (a) **General.** In providing health, welfare, or other social services or benefits, a recipient may not, on the basis of handicap:
 - (1) Deny a qualified handicapped person these benefits or services;
 - (2) Afford a qualified handicapped person an opportunity to receive benefits or services that is not equal to that offered nonhandicapped persons;
 - (3) Provide a qualified handicapped person with benefits or services that are not as effective, as defined in § 17.203(b), as the benefits or services provided to others;
 - (4) Provide benefits or services in a manner that limits or has the effect of limiting the participation of qualified handicapped persons; or
 - (5) Provide different or separate benefits or services to handicapped persons except where necessary to provide qualified handicapped persons with benefits and services that are as effective as those provided to others.
- (b) **Notice.** A recipient that provides notice concerning beneficiaries or services, or written material concerning waivers of rights or consent to treatment, shall take such steps as are necessary to insure that qualified handicapped persons, including those with impaired sensory or speaking skills, are not denied effective notice because of their handicap.
- (c) **Emergency treatment for the hearing impaired.** A recipient hospital that provides health services or benefits shall establish a procedure for effective communication with persons with impaired hearing for the purpose of providing emergency health care.
- (d) **Auxiliary aids.**
 - (1) A recipient that employs fifteen or more persons shall provide appropriate auxiliary aids to persons with impaired sensory, manual, or speaking skills, where necessary to afford such persons an equal opportunity to benefit from the service in question.
 - (2) The Director may require recipients with fewer than fifteen employees to provide auxiliary aids where the provision of aids would not significantly impair the ability of the recipient to provide its benefits or services.

- (3) For the purpose of this paragraph, auxiliary aids may include brailled and taped material, interpreters, visual aids, and other aids for persons with impaired hearing or vision.

§ 17.251 Drug and alcohol addicts.

A recipient that operates a general hospital or outpatient facility may not discriminate in admission or treatment against a drug or alcohol abuser or addict who is suffering from a medical condition, because of the person's drug or alcohol abuse or addiction.

§ 17.252 Education of institutionalized persons.

A recipient that operates or supervises a program or activity that provides aid, benefits, or services for persons who are institutionalized because of handicap shall ensure that each qualified handicapped person, as defined in § 17.202(d)(2), in its program or activity is provided an appropriate education, as defined in the regulation set forth by the Department of Education at 34 CFR 104.33(b). Nothing in this section shall be interpreted as altering in any way the obligations of recipients under § 17.216.

§§ 17.253-17.259 [Reserved]

§ 17.260 Historic Preservation Programs.

- (a) **Definitions.** For the purposes of this section, Historic Preservation Programs are those that receive Federal financial assistance that has preservation of historic properties as a primary purpose.

Historic properties means those buildings or facilities that are listed or eligible for listing in the National Register of Historic Places, or such properties designated as historic under a statute of the appropriate State or local governmental body.

Substantial impairment means a permanent alteration that results in a significant loss of the integrity of finished materials, design quality or special character.

- (b) **Obligations.**

- (1) A recipient shall operate any program or activity involving Historic Preservation Programs so that when each part is viewed in its entirety it is readily accessible to and usable by handicapped persons. This paragraph does not necessarily require a recipient to make each of its existing historic properties or every part of an historic property accessible to and usable by qualified handicapped persons. Methods of achieving accessibility include:

- (i) Making physical alterations which enable qualified handicapped persons to have access to otherwise inaccessible areas or features of historic properties;
- (ii) Using audio-visual materials and devices to depict otherwise inaccessible areas or features of historic properties;
- (iii) Assigning persons to guide qualified handicapped persons into or through otherwise inaccessible portions of historic properties;
- (iv) Adopting other innovative methods to achieve accessibility.

Because the primary benefit of an Historic Preservation Program is the experience of the historic property itself, in taking steps to achieve accessibility, recipients shall give priority to those means which make the historic property, or portions thereof, physically accessible to handicapped individuals.

- (2) Where accessibility cannot be achieved without causing a substantial impairment of significant historic features, the Secretary may grant a waiver of the accessibility requirement. In determining whether accessibility can be achieved without causing a substantial impairment, the Secretary shall consider the following factors:
 - (i) Scale of property, reflecting its ability to absorb alterations;
 - (ii) Use of the property, whether primarily for public or private purpose;
 - (iii) Importance of the historic features of the property to the conduct of the program or activity; and,
 - (iv) Cost of alterations in comparison to the increase in accessibility.

The Secretary shall periodically review any waiver granted under this section and may withdraw it if technological advances or other changes so warrant.

- (c) **Advisory Council comments.** Where the property is federally owned or where Federal funds may be used for alterations, the comments of the Advisory Council on Historic Preservation shall be obtained when required by section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), and 36 CFR part 800, prior to effectuation of structural alterations.

[47 FR 29546, July 7, 1982, as amended at 55 FR 28912, July 16, 1990; 68 FR 51377, Aug. 26, 2003]

§ 17.270 Recreation.

This section applies to recipients that operate, or that receive Federal financial assistance for the operation of programs or activities involving recreation.

- (a) **Accessibility in existing recreation facilities.** In the case of existing recreation facilities, accessibility of programs or activities shall mean accessibility of programs or activities when viewed in their entirety as provided at § 17.217. When it is not reasonable to alter natural and physical features, the following other methods of achieving accessibility may include, but are not limited to:
 - (1) Reassigning aid, benefits, or services to accessible locations.
 - (2) Delivering aid, benefits, or services at alternate accessible sites operated by or available for such use by the recipient.
 - (3) Assignments of aides to beneficiaries.
 - (4) Construction of new facilities in conformance with the requirements of § 17.218.
 - (5) Other methods that result in making the aid, benefits, or services accessible to handicapped persons.
- (b) [Reserved]

[47 FR 29546, July 7, 1982, as amended at 68 FR 51377, Aug. 26, 2003]

§§ 17.271-17.279 [Reserved]

§ 17.280 Enforcement procedures.

The compliance and enforcement provisions applicable to title VI of the Civil Rights Act of 1964 apply to this subpart. These procedures are found in 43 CFR part 17, subpart A, §§ 17.5-17.11 and 43 CFR part 4, subpart I.

Subpart C—Nondiscrimination on the Basis of Age

Authority: Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101 *et seq.*; 45 CFR part 90.

Source: 54 FR 3598, Jan. 25, 1989, unless otherwise noted.

GENERAL

§ 17.300 What is the purpose of the Age Discrimination Act of 1975?

The Age Discrimination Act of 1975, as amended, is designed to prohibit discrimination on the basis of age in programs or activities receiving Federal financial assistance. The Act also permits federally assisted programs or activities, and recipients of Federal funds, to continue to use certain age distinctions and factors other than age which meet the requirements of the Act and these regulations.

§ 17.301 What is the purpose of DOI's age discrimination regulations?

The purpose of these regulations is to set out DOI's policies and procedures under the Age Discrimination Act of 1975 and the general age discrimination regulations at 45 CFR part 90. The Act and the general regulations prohibit discrimination on the basis of age in programs or activities receiving Federal financial assistance. The Act and the general regulations permit federally assisted programs or activities, and recipients of Federal funds, to continue to use age distinctions and factors other than age which meet the requirements of the Act and its implementing regulations.

§ 17.302 To what programs or activities do these regulations apply?

- (a) The Act and these regulations apply to each DOI recipient and to each program or activity operated by the recipient which receives Federal financial assistance provided by DOI.
- (b) The Act and these regulations do not apply to:
 - (1) An age distinction contained in that part of a Federal, State or local statute or ordinance adopted by an elected, general purpose legislative body which:
 - (i) Provides any benefits or assistance to persons based on age; or,
 - (ii) Establishes criteria for participation in age-related terms; or,
 - (iii) Describes intended beneficiaries or target groups in age-related terms; or
 - (2) Any employment practice of any employer, employment agency, or labor-management joint apprenticeship training program, except for any program or activity receiving Federal financial assistance for public service employment under the Job Partnership Training Act (29 U.S.C. 1501 *et seq.*).

§ 17.303 Definitions.

As used in these regulations, the term:

- (a) **Act** means the Age Discrimination Act of 1975, as amended (Title III of Pub. L. 94-135).
- (b) **Action** means any act, activity, policy, rule, standard, or method of administration; or the use of any policy, rule, standard, or method of administration.
- (c) **Age** means how old a person is, or the number of years from the date of a person's birth.
- (d) **Age distinction** means any action using age or an age-related term.
- (e) **Age-related term** means a word or words which necessarily imply a particular age or range of ages (for example, "children," "adult," "older persons," but not "student").
- (f) **Discrimination** means unlawful treatment based on age.
- (g) **DOI** means the United States Department of the Interior.
- (h) **Federal financial assistance** means any grant, entitlement, loan, cooperative agreement, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which the agency provides or otherwise makes available assistance in the form of:
 - (1) Funds;
 - (2) Services of Federal personnel;
 - (3) Real and personal property or any interest in or use of property, including:
 - (i) Transfers or leases of property for less than fair market value or for reduced consideration; and
 - (ii) Proceeds from a subsequent transfer or lease of property if the Federal share of its fair market value is not returned to the Federal Government.
- (i) **FMCS** means the Federal Mediation and Conciliation Service.
- (j) **Program or activity** means all of the operations of any entity described in paragraphs (j)(1) through (4) of this section, any part of which is extended Federal financial assistance:
 - (1)
 - (i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or
 - (ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;
 - (2)
 - (i) A college, university, or other postsecondary institution, or a public system of higher education; or
 - (ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;
 - (3)
 - (i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

- (A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or
- (B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or
- (ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or
- (4) Any other entity which is established by two or more of the entities described in paragraph (j)(1), (2), or (3) of this section.
- (k) **Recipient** means any State or its political subdivision, any instrumentality of a State or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal assistance is extended, directly or through another recipient. Recipient includes any successor, assignee, transferee, or subrecipient, but excludes the ultimate beneficiary of the assistance.
- (l) **Secretary** means the Secretary of the Department of the Interior or his or her designee.
- (m) **Subrecipient** means any of the entities in the definition of "recipient" to which a recipient extends or passes on Federal financial assistance. A subrecipient is generally regarded as a recipient of Federal financial assistance and has all the duties of a recipient in these regulations.
- (n) **United States** means the fifty states, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Commonwealth of the Northern Marianas, and the territories and possessions of the United States.

[54 FR 3598, Jan. 25, 1989, as amended at 68 FR 51378, Aug. 26, 2003]

STANDARDS FOR DETERMINING AGE DISCRIMINATION

§ 17.310 Rules against age discrimination.

The rules stated in this section are limited by the exceptions contained in § 17.311.

- (a) **General rule.** No person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.
- (b) **Specific rules.** A recipient may not, in any program or activity receiving Federal financial assistance, directly or through contractual, licensing, or other arrangements, use age distinctions or take any other actions which have the effect, on the basis of age, of:
 - (1) Excluding individuals from, denying them the benefits of, or subjecting them to, discrimination under a program or activity receiving Federal financial assistance; or
 - (2) Denying or limiting individuals in their opportunity to participate in any program or activity receiving Federal financial assistance.
- (c) The specific forms of age discrimination listed in paragraph (b) of this section do not necessarily constitute a complete list.

§ 17.311 Exceptions to the rules against age discrimination.

- (a) Definitions. For purposes of this section, the terms “normal operation” and “statutory objective” shall have the following meaning:
 - (1) **Normal operation** means the operation of a program or activity without significant changes that would impair its ability to meet its objectives.
 - (2) **Statutory objective** means any purpose of a program or activity expressly stated in any Federal, State, or local statute or ordinance adopted by an elected, general purpose legislative body.
- (b) Exceptions to the rules against age discrimination: Normal operation or statutory objective of any program or activity.

A recipient is permitted to take an action otherwise prohibited by § 17.310 if the action reasonably takes into account age as a factor necessary to the normal operation or the achievement of any statutory objective of a program or activity. An action reasonably takes into account age as a factor necessary to the normal operation or the achievement of any statutory objective of a program or activity, if:

- (1) Age is used as a measure or approximation of one or more other characteristics; and
 - (2) The other characteristic(s) must be measured or approximated in order for the normal operation of the program or activity to continue, or to achieve any statutory objective of the program or activity; and
 - (3) The other characteristic(s) can be reasonably measured or approximated by the use of age; and
 - (4) The other characteristic(s) are impractical to measure directly on an individual basis.
- (c) Exceptions to the rules against age discrimination: Reasonable factors other than age. A recipient is permitted to take an action otherwise prohibited by § 17.310 which is based on a factor other than age, even though that action may have a disproportionate effect on persons of different ages. An action may be based on a factor other than age only if the factor bears a direct and substantial relationship to the normal operation of the program or activity or to the achievement of a statutory objective.

§ 17.312 Burden of proof.

The burden of proving that an age distinction or other action falls within the exceptions outlined in §§ 17.311(b) and 17.311(c), is on the recipient of Federal financial assistance.

§ 17.313 Special benefits for children and the elderly.

If a recipient operating a program or activity provides special benefits to the elderly or to children, such use of age distinctions shall be presumed to be necessary to the normal operation of the program or activity, notwithstanding the provisions of § 17.311.

§ 17.314 Age distinctions contained in DOI regulations.

Any age distinctions contained in a rule or regulation issued by DOI shall be presumed to be necessary to the achievement of a statutory objective of the program or activity to which the rule or regulation applies, notwithstanding the provisions of § 17.311.

§ 17.315 Affirmative action by recipients.

Even in the absence of a finding of discrimination, a recipient may take affirmative action to overcome the effects of conditions that resulted in limited participation in the recipient's program or activity on the basis of age.

DUTIES OF DOI RECIPIENTS

§ 17.320 General responsibilities.

Each DOI recipient has primary responsibility to ensure that its programs or activities are in compliance with the Act and these regulations, and shall take steps to eliminate violations of the Act. A recipient also has responsibility to maintain records, provide information, and to afford DOI access to its records to the extent DOI finds necessary to determine whether the recipient is in compliance with the Act and these regulations.

§ 17.321 Notice to subrecipients and beneficiaries.

- (a) Where a recipient extends Federal financial assistance from DOI to subrecipients, the recipient shall provide the subrecipients written notice of their obligations under the Act and these regulations.
- (b) Each recipient shall make necessary information about the Act and these regulations available to its beneficiaries in order to inform them of the protections against discrimination provided by the Act and these regulations.

§ 17.322 Assurance of compliance and recipient assessment of age distinctions.

- (a) Each recipient of Federal financial assistance from DOI shall sign a written assurance as specified by DOI that it will comply with the Act and these regulations.
- (b) *Recipient assessment of age distinctions.*
 - (1) As part of a compliance review under § 17.330 or complaint investigation under § 17.331, DOI may require a recipient employing the equivalent of 15 or more employees to complete a written self-evaluation, in a manner specified by the responsible Department official, of any age distinction imposed in its program or activity receiving Federal financial assistance from DOI to assess the recipient's compliance with the Act.
 - (2) Whenever an assessment indicates a violation of the Act and the DOI regulations, the recipient shall take corrective action.

§ 17.323 Information collection requirements.

Each recipient shall:

- (a) Keep records in a form and containing information which DOI determines may be necessary to ascertain whether the recipient is complying with the Act and these regulations.
- (b) Provide to DOI, upon request, information and reports which DOI determines are necessary to ascertain whether the recipient is complying with the Act and these regulations.
- (c) Permit reasonable access by DOI to the books, records, accounts, and other recipient facilities and sources of information to the extent DOI determines necessary to ascertain whether the recipient is complying with the Act and these regulations.

- (d) The information collection requirements contained in this section have been approved by the Office of Management and Budget under 44 U.S.C. 3501 et seq. and assigned clearance number 1084-0027. The information will be collected and used to assess recipients' compliance with the Act. Response is required to obtain a benefit.
- (e) Public reporting burden for this information is estimated to average 8 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed; and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to: Departmental Clearance Officer, U.S. Department of the Interior, 18th and C Streets, NW., Washington, DC 20240, Mail Stop 2242; and the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

INVESTIGATION, CONCILIATION, AND ENFORCEMENT PROCEDURES

§ 17.330 Compliance reviews.

- (a) DOI may conduct compliance reviews and pre-award reviews of recipients or use other similar procedures that will permit it to investigate and correct violations of the Act and these regulations. DOI may conduct these reviews even in the absence of a complaint against a recipient. The reviews may be as comprehensive as necessary to determine whether a violation of the Act and these regulations has occurred.
- (b) If a compliance review or pre-award review indicates a violation of the Act or these regulations, DOI will attempt to secure voluntary compliance with the Act. If voluntary compliance cannot be achieved, DOI will arrange for enforcement as described in § 17.335.

§ 17.331 Complaints.

- (a) Any person, individually or as a member of a class or on behalf of others, may file a complaint with DOI, alleging discrimination prohibited by the Act or these regulations based on an action occurring on or after July 1, 1979. A complaint must be filed within 180 days from the date the complainant had knowledge of the alleged act of discrimination. For good cause shown, however, DOI may extend this time limit.
- (b) DOI will consider the date a complaint is filed to be the date upon which the complaint sufficiently meets the criteria for acceptance as described in paragraphs (a) and (c)(1) of this section.
- (c) DOI will attempt to facilitate the filing of complaints wherever possible, including taking the following measures:
 - (1) Accepting as a sufficient complaint, any written statement which identifies the parties involved and the date the complainant first had knowledge of the alleged violation, describes generally the action or practice complained of, and is signed by the complainant.
 - (2) Freely permitting a complainant to add information to the complaint to meet the requirements of a sufficient complaint, as described in paragraphs (a) and (c)(1) of this section.
 - (3) Notifying the complainant and the recipient of their rights and obligations under the complaint procedure, including the right to have a representative at all stages of the complaint procedure.
 - (4) Notifying the complainant and the recipient (or their representatives) of their right to contact DOI for information and assistance regarding the complaint resolution process.

- (d) DOI will return to the complainant any complaint outside the jurisdiction of these regulations, and will state the reason(s) why it is outside the jurisdiction of these regulations.

§ 17.332 Mediation.

- (a) *Referral of complaints for mediation.* DOI will promptly refer to the FMCS all sufficient complaints that:
 - (1) Fall within the jurisdiction of the Act and these regulations unless the age distinction complained of is clearly within an exception; and,
 - (2) Contain all information necessary for further processing.
- (b) Both the complainant and the recipient shall participate in the mediation process to the extent necessary to reach an agreement or make an informed judgment that an agreement is not possible.
- (c) If the complainant and the recipient reach an agreement, FMCS shall prepare a written statement of the agreement and have the complainant and the recipient sign it. The FMCS shall send the agreement to DOI. DOI, however, retains the right to monitor the recipient's compliance with the agreement.
- (d) The FMCS shall protect the confidentiality of all information obtained in the course of the mediation process. No mediator shall testify in any adjudicative proceeding, produce any document, or otherwise disclose any information obtained in the course of the mediation process without prior approval of the head of the mediation agency.
- (e) DOI will use the mediation process for a maximum of 60 days after receiving a complaint. Mediation ends if:
 - (1) 60 days elapse from the time the complaint is filed; or
 - (2) Prior to the end of that 60 day period, an agreement is reached; or
 - (3) Prior to the end of that 60 day period, the FMCS determines that an agreement cannot be reached.
- (f) The FMCS shall return unresolved complaints to DOI.

§ 17.333 Investigation.

- (a) *Informal investigation.*
 - (1) DOI will investigate complaints that are unresolved after mediation or are reopened because of a violation of a mediation agreement.
 - (2) As part of the initial investigation, DOI will use informal fact finding methods, including joint or separate discussions with the complainant and recipient to establish the facts, and, if possible, settle the complaint on terms that are mutually agreeable to the parties. DOI may seek the assistance of any involved State agency.
 - (3) DOI will put any agreement in writing and have it signed by the parties and an authorized official at DOI.
 - (4) The settlement shall not affect the operation of any other enforcement effort of DOI, including compliance reviews and investigation of other complaints which may involve the recipient.
 - (5) The settlement is not a finding of discrimination against a recipient.

- (b) **Formal investigation.** If DOI cannot resolve the complaint through informal means, it will develop formal findings through further investigation of the complaint. If the investigation indicates a violation of these regulations, DOI will attempt to obtain voluntary compliance. If DOI cannot obtain voluntary compliance, it will begin enforcement as described in § 17.335.

§ 17.334 Prohibition against intimidation or retaliation.

A recipient may not engage in acts of intimidation or retaliation against any person who:

- (a) Attempts to assert a right protected by the Act or these regulations; or
- (b) Cooperates in any mediation, inquiry, hearing, or other part of DOI's investigation, conciliation, and enforcement process.

§ 17.335 Compliance procedure.

- (a) DOI may enforce the Act and these regulations through:
 - (1) Termination of a recipient's Federal financial assistance from DOI under the program or activity involved where the recipient has violated the Act or these regulations. The determination of the recipient's violation may be made only after a recipient has had an opportunity for a hearing on the record before an administrative law judge.
 - (2) Any other means authorized by law including but not limited to:
 - (i) Referral to the Department of Justice for proceedings to enforce any rights of the United States or obligations of the recipient created by the Act or these regulations.
 - (ii) Use of any requirement of, or referral to, any Federal, State or local government agency that will have the effect of correcting a violation of the Act or these regulations.
- (b) DOI will limit any termination under § 17.335(a)(1) to the particular recipient and particular program or activity or part of such program or activity DOI finds in violation of these regulations. DOI will not base any part of a termination on a finding with respect to any program or activity of the recipient that does not receive Federal financial assistance from DOI.
- (c) DOI will take no action under paragraph (a) of this section until:
 - (1) The Secretary or his/her designee has advised the recipient of its failure to comply with the Act and these regulations and has determined that voluntary compliance cannot be obtained.
 - (2) Thirty days have elapsed after the Secretary or his/her designee has sent a written report of the circumstances and grounds of the action to the committees of Congress having legislative jurisdiction over the program or activity involved. The Secretary or his/her designee will file a report whenever any action is taken under paragraph (a) of this section.
- (d) DOI also may defer granting new Federal financial assistance from DOI to a recipient when a hearing under § 17.335(a)(1) is initiated.
 - (1) New Federal financial assistance from DOI includes all assistance for which DOI requires an application or approval, including renewal or continuation of existing activities or authorization of new activities, during the deferral period. New Federal financial assistance from DOI does not include increases in funding as a result of changed computation of formula awards or assistance approved prior to the beginning of a hearing under § 17.335(a)(1).

- (2) DOI will not begin a deferral until the recipient has received a notice of an opportunity for a hearing under § 17.335(a)(1). DOI will not continue a deferral for more than 60 days unless a hearing has begun within that time or the time for beginning the hearing has been extended by mutual consent of the recipient and the Secretary. DOI will not continue a deferral for more than 30 days after the close of the hearing, unless the hearing results in a finding against the recipient.

§ 17.336 Hearings, decisions, post-termination proceedings.

Certain DOI procedural provisions applicable to title VI of the Civil Rights Act of 1964 apply to DOI's enforcement of these regulations. The procedural provisions of DOI's Title VI regulations can be found at 43 CFR 17.8 through 17.10 and 43 CFR part 4, subpart I.

§ 17.337 Remedial action by recipients.

Where DOI finds a recipient has discriminated on the basis of age, the recipient shall take any remedial action that DOI may require to overcome the effects of the discrimination. If another recipient exercises control over the recipient that has discriminated, DOI may require both recipients to take remedial action.

§ 17.338 Alternate funds disbursement procedure.

- (a) When DOI withholds funds from a recipient under these regulations, where permissible the Secretary may disburse the withheld funds directly to an alternate recipient under the applicable regulations of the bureau or office providing the assistance.
- (b) The Secretary will require any alternative recipient to demonstrate:
 - (1) The ability to comply with these regulations; and
 - (2) The ability to achieve the goals of the Federal statute authorizing the Federal financial assistance.

§ 17.339 Exhaustion of administrative remedies.

- (a) A complainant may file a civil action following the exhaustion of administrative remedies under the Act. Administrative remedies are exhausted if:
 - (1) 180 days have elapsed since the complainant filed the complaint and DOI has made no finding with regard to the complaint; or
 - (2) DOI issues any finding in favor of the recipient.
- (b) If DOI fails to make a finding within 180 days or issues a finding in favor of the recipient, DOI will:
 - (1) Promptly advise the complainant of this fact;
 - (2) Advise the complainant of his or her right to bring a civil action for injunctive relief; and
 - (3) Inform the complainant:
 - (i) That he or she may bring a civil action only in a United States district court for the district in which the recipient is found or transacts business;
 - (ii) That a complainant prevailing in a civil action has the right to be awarded the costs of the action, including reasonable attorney's fees, but that the complainant must demand these costs in the complaint;

- (iii) That before commencing the action the complainant shall give 30 days notice by registered mail to the Secretary of HHS, the Attorney General of the United States, the Secretary of the Interior, and the recipient;
- (iv) That the notice must state: the alleged violation of the Act; the relief requested; the court in which the complainant is bringing the action; and whether or not attorney's fees are demanded in the event the complainant prevails; and
- (v) That the complainant may not bring an action if the same alleged violation of the Act by the same recipient is the subject of a pending action in any court of the United States.

Subpart D [Reserved]

Subpart E—Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Department of the Interior

Authority: 29 U.S.C. 794.

Source: 52 FR 6553, Mar. 5, 1987, unless otherwise noted.

§ 17.501 Purpose.

The purpose of this part is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the U.S. Postal Service.

§ 17.502 Application.

This part applies to all programs and activities conducted and/or administered and/or maintained by the agency except for programs or activities conducted outside the United States that do not involve handicapped persons in the United States.

§ 17.503 Definitions.

For purposes of this part, the term—

Agency means Department of the Interior.

Auxiliary aids means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the agency. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio recordings, and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, notetakers, written materials, and other similar services and devices.

Complete complaint means a written statement that contains the complainant's name and address and describe the agency's actions in sufficient detail to inform the agency of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complainant or behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

Facility means all or any portion of buildings, structures, equipment, roads, walks, parking lots, outdoor recreation and program spaces, park sites, developed sites, rolling stock or other conveyances, or other real or personal property.

Handicapped person means any person who has a physical, mental, or sensory impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. As used in this definition, the phrase:

(1) **Physical, mental, or sensory impairment** includes—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical, mental or sensory impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addiction, and alcoholism.

(2) **Major life activities** includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) **Has a record of such impairment** means has a history of, or has been misclassified as having, a mental, physical, or sensory impairment that substantially limits one or more major life activities.

(4) **Is regarded as having an impairment** means—

(i) Has a physical, mental, or sensory impairment that does not substantially limit major life activities but is treated by the agency as constituting such a limitation;

(ii) Has a physical, mental, or sensory impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in paragraph (1) of this definition but is treated by the agency as having such an impairment.

Historic preservation programs means programs conducted by the agency that have preservation of historic properties as a primary purpose.

Historic properties means those properties that are listed or eligible for listing in the National Register of Historic Places or properties designated as historic under a statute of the appropriate state or local government body.

Qualified handicapped person means—

- (1) With respect to preschool, elementary, or secondary education services provided by the agency, a handicapped person who is a member of a class of persons otherwise entitled by statute, regulation, or agency policy to receive education services from the agency.
- (2) With respect to any other agency program or activity under which a person is required to perform services or to achieve a level of accomplishment, a handicapped person who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the agency can demonstrate would result in a fundamental alteration in its nature; or
- (3) With respect to any other program or activity, a handicapped person who meets the essential eligibility requirements for participation in, or receipt of benefits from that program or activity.
- (4) *Qualified handicapped person* is defined for purposes of employment in 29 CFR 1613.702(f), which is made applicable to this part by § 17.540.

Section 504 means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112, 87 Stat. 394 (29 U.S.C. 794)), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93-516, 88 Stat. 1617), and the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95-602, 92 Stat. 2955). As used in this part, section 504 applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

Substantial impairment means a significant loss of the integrity of finished materials, design quality, or special character resulting from a permanent alteration.

§§ 17.504-17.509 [Reserved]

§ 17.510 Self-evaluation.

- (a) The agency shall, within one year of the effective date of this part, evaluate, with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons, its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this part, and, to the extent modification of any such policies and practices is required, the agency shall proceed to make the necessary modifications.
- (b) The agency shall, for at least three years following completion of the evaluation required under paragraph (a) of this section, maintain on file and make available for public inspection—
 - (1) A list of the interested persons consulted;
 - (2) A description of areas examined and any problems identified; and
 - (3) A description of any modifications made.

§ 17.511 Notice.

The agency shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the programs or activities conducted by the agency, and make such information available to them in such manner as the agency head finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this regulation.

§§ 17.512-17.529 [Reserved]

§ 17.530 General prohibitions against discrimination.

- (a) No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the agency.
- (b)
 - (1) The agency, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap—
 - (i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;
 - (ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit or service that is not equal to that afforded others;
 - (iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;
 - (iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons than is provided to others unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;
 - (v) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or
 - (vi) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.
 - (2) The agency may not deny a qualified handicapped person the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.
 - (3) The agency may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would—
 - (i) Subject qualified handicapped persons to discrimination on the basis of handicap; or
 - (ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to handicapped persons.
 - (4) The agency may not, in determining the site or location of a facility, make selections the purpose or effect of which would—
 - (i) Exclude handicapped persons from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the agency; or
 - (ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to handicapped persons.
 - (5) The agency, in the selection of procurement contractors, may not use criteria that subject qualified handicapped persons to discrimination on the basis of handicap.

- (6) The agency may not administer a licensing or certification program in a manner that subjects qualified handicapped persons to discrimination on the basis of handicap, nor may the agency establish requirements for the programs or activities of licensees or certified entities that subject qualified handicapped persons to discrimination on the basis of handicap. However, the programs or activities of entities that are licensed or certified by the agency are not, themselves, covered by this part.
- (c) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or Executive order to handicapped persons or the exclusion of a specific class of handicapped persons from a program limited by Federal statute or Executive order to a different class of handicapped persons is not prohibited by this part.
- (d) The agency shall administer programs or activities in the most integrated setting appropriate to the needs of qualified handicapped persons.

§§ 17.531-17.539 [Reserved]

§ 17.540 Employment.

No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the agency. The definitions, requirements and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR part 1613, shall apply to employment in federally conducted programs or activities.

§§ 17.541-17.548 [Reserved]

§ 17.549 Program accessibility: Discrimination prohibited.

Except as otherwise provided in § 17.550, no qualified handicapped person shall, because the agency's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

§ 17.550 Program accessibility: Existing facilities.

- (a) **General.** The agency shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by handicapped persons. This paragraph does not—
 - (1) Necessarily require the agency to make each of its existing facilities or every part of a facility accessible to and usable by handicapped persons;
 - (2) In the case of historic preservation programs, require the agency to take any action that would result in a substantial impairment of significant historic features of an historic property; or
 - (3) Require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 17.550(a) would result in such an alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such

an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that handicapped persons receive the benefits and services of the program or activity.

(b) **Methods** –

- (1) **General.** The agency may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible locations, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by handicapped persons. The agency is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The agency, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151-4157) and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the agency shall give priority to those methods that offer programs and activities to qualified handicapped persons in the most integrated setting appropriate.
 - (2) **Historic preservation programs.** In meeting the requirements of paragraph (a) of this section in historic preservation programs, the agency shall give priority to methods that provide physical access to handicapped persons. In cases where a physical alteration to an historic property is not required because of paragraph (a)(2) or (a)(3) of this section, alternative, methods of achieving program accessibility include—
 - (i) Using audio-visual materials and devices to depict those portions of an historic property that cannot otherwise be made accessible.
 - (ii) Assigning persons to guide handicapped persons into or through portions of historic properties that cannot otherwise be made accessible; or
 - (iii) Adopting other innovative methods.
 - (3) **Recreation programs.** In meeting the requirements of paragraph (a) in recreation programs, the agency shall provide that the program or activity, when viewed in its entirety, is readily accessible to and usable by handicapped persons. When it is not reasonable to alter natural and physical features, accessibility may be achieved by alternative methods as noted in paragraph (b)(1) of this section.
- (c) **Time period for compliance.** The agency shall comply with the obligations established under this section within sixty (60) days of the effective date of this part except that where structural changes in facilities are necessary, such changes shall be made within three years of the effective date of this part, but in any event as expeditiously as possible.
- (d) **Transition plan.** In the event that structural changes to facilities are necessary to achieve program accessibility, the agency shall develop, within six months of the effective date of this part, a transition plan setting forth the steps necessary to complete such changes. The plan shall be developed with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons. A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—
- (1) Identify physical obstacles in the agency's facilities that limit the accessibility of its programs or activities to handicapped persons;

- (2) Describe in detail the methods that will be used to make the facilities accessible;
- (3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period;
- (4) Indicate the official responsible for implementation of the plan; and
- (5) Identify the persons or groups with whose assistance the plan was prepared.

§ 17.551 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered so as to be readily accessible to and usable by handicapped persons. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151-4157) as established in 41 CFR 101-19.600 to 101-19.607 apply to buildings covered by this section.

§§ 17.552-17.559 [Reserved]

§ 17.560 Communications.

- (a) The agency shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.
 - (1) The agency shall furnish appropriate auxiliary aids where necessary to afford a handicapped person an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the agency.
 - (i) In determining what type of auxiliary aid is necessary, the agency shall give primary consideration to the requests of the handicapped person.
 - (ii) The agency need not provide individually prescribed devices, readers for personal use or study, attendant services, or other devices of a personal nature.
 - (2) Where the agency communicate with applicants and beneficiaries by telephone, telecommunications devices for deaf persons (TDD's) or equally effective telecommunication systems shall be used.
- (b) The agency shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.
- (c) The agency shall provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.
- (d) This section does not require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 17.560 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in

such alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, handicapped persons receive the benefits and services of the program or activity.

§§ 17.561-17.569 [Reserved]

§ 17.570 Compliance procedures.

- (a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs or activities conducted by the agency.
- (b) The agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).
- (c) Responsibility for implementation and operation of this section shall be vested in the Director of the Office for Equal Opportunity. Complaints filed pursuant to this section shall be delivered or mailed to the Director, Office for Equal Opportunity, U.S. Department of the Interior, Washington, DC 20240. If any agency official other than the Director of the Office for Equal Opportunity receives a complaint, he or she shall immediately forward the complaint to the agency's Director of the Office for Equal Opportunity.
- (d)
 - (1) The agency shall accept and investigate all complete complaints for which it has jurisdiction. All complete complaints must be filed within 180 days of the alleged act of discrimination. The agency may extend this time period for good cause.
 - (2) If the agency Director for the Office of Equal Opportunity receives a complaint that is not complete, he or she shall notify the complainant, within thirty (30) days of receipt of the incomplete complaint, that additional information is needed. If the complainant fails to complete and submit the requested information within thirty (30) days of receipt of this notice the agency Director of the Office for Equal Opportunity shall dismiss the complaint without prejudice.
 - (3) The agency Director of the Office for Equal Opportunity may require agency employees to cooperate and participate in the investigation and resolution of complaints. Employees who are required to cooperate and participate in any investigation under this section shall do so as part of their official duties.
- (e) If the agency receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall refer the complaint to the appropriate government entity.
- (f) The agency shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151-4157), or section 502 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 792), is not readily accessible to and usable by handicapped persons.
- (g) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, the agency shall notify the complainant of the results of the investigation in a letter containing—
 - (1) Findings of fact and conclusions of law;
 - (2) A description of a remedy for each violation found; and
 - (3) A notice of the right to appeal.

- (h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within ninety (90) days of receipt from the agency of the letter required by § 17.570(g). The agency may extend this time for good cause.
- (i) Timely appeals shall be accepted and processed by the Under Secretary.
- (j) The agency shall notify the complainant of the results of the appeal within sixty (60) days of the receipt of the request. If the agency determines that it needs additional information from the complainant, it shall have sixty (60) days from the date it receives the additional information to make its determination on the appeal.
- (k) The time limits cited in paragraphs (g) and (j) of this may be extended for an individual case when the Under Secretary determines that there is good cause, based on the particular circumstances of that case, for the extension.
- (l) The agency may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated.

DEPARTMENT OF JUSTICE**Enforcement of Title VI of the Civil Rights Act of 1964—National Origin Discrimination Against Persons With Limited English Proficiency; Policy Guidance**

AGENCY: Civil Rights Division, Department of Justice.

ACTION: Policy guidance document.

SUMMARY: This Policy Guidance Document entitled "Enforcement of Title VI of the Civil Rights Act of 1964—National Origin Discrimination Against Persons with Limited English Proficiency (LEP Guidance)" is being issued pursuant to authority granted by Executive Order 12250 and Department of Justice Regulations. It addresses the application of Title VI's prohibition on national origin discrimination when information is provided only in English to persons with limited English proficiency. This policy guidance does not create new obligations, but rather, clarifies existing Title VI responsibilities. The purpose of this document is to set forth general principles for agencies to apply in developing guidelines for services to individuals with limited English proficiency. The Policy Guidance Document appears below.

DATES: Effective August 11, 2000.

ADDRESSES: Coordination and Review Section, Civil Rights Division, P.O. Box 66560, Washington, D.C. 20035-6560.

FOR FURTHER INFORMATION CONTACT: Merrily Friedlander, Chief, Coordination and Review Section, Civil Rights Division, (202) 307-2222.

Helen L. Norton,
Counsel to the Assistant Attorney General,
Civil Rights Division.

Office of the Assistant Attorney General
Washington, D.C. 20530

August 11, 2000.

TO: Executive Agency Civil Rights Officers

FROM: Bill Lann Lee, Assistant Attorney General, Civil Rights Division

SUBJECT: Policy Guidance Document: *Enforcement of Title VI of the Civil Rights Act of 1964—National Origin Discrimination Against Persons With Limited English Proficiency* ("LEP Guidance")

This policy directive concerning the enforcement of Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d *et seq.*, as amended, is being issued pursuant to the authority granted by

Executive Order No. 12250¹ and Department of Justice regulations.² It addresses the application to recipients of federal financial assistance of Title VI's prohibition on national origin discrimination when information is provided only in English to persons who do not understand English. This policy guidance does not create new obligations but, rather, clarifies existing Title VI responsibilities.

Department of Justice Regulations for the Coordination of Enforcement of Non-discrimination in Federally Assisted Programs (Coordination Regulations), 28 C.F.R. 42.401 *et seq.*, direct agencies to "publish title VI guidelines for each type of program to which they extend financial assistance, where such guidelines would be appropriate to provide detailed information on the requirements of Title VI." 28 CFR § 42.404(a). The purpose of this document is to set forth general principles for agencies to apply in developing such guidelines for services to individuals with limited English proficiency (LEP). It is expected that, in developing this guidance for their federally assisted programs, agencies will apply these general principles, taking into account the unique nature of the programs to which they provide federal financial assistance.

A federal aid recipient's failure to assure that people who are not proficient in English can effectively participate in and benefit from programs and activities may constitute national origin discrimination prohibited by Title VI. In order to assist agencies that grant federal financial assistance in ensuring that recipients of federal financial assistance are complying with their responsibilities, this policy directive addresses the appropriate compliance standards. Agencies should utilize the standards set forth in this Policy Guidance Document to develop specific criteria applicable to review the programs and activities for which they offer financial assistance. The Department of Education³ already has

established policies, and the Department of Health and Human Services (HHS)⁴ has been developing guidance in a manner consistent with Title VI and this Document, that applies to their specific programs receiving federal financial assistance.

Background

Title VI of the Civil Rights Act of 1964 prohibits recipients of federal financial assistance from discriminating against or otherwise excluding individuals on the basis of race, color, or national origin in any of their activities. Section 601 of Title VI, 42 U.S.C. § 2000d, provides:

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

The term "program or activity" is broadly defined. 42 U.S.C. § 2000d-4a.

Consistent with the model Title VI regulations drafted by a Presidential task force in 1964, virtually every executive agency that grants federal financial assistance has promulgated regulations to implement Title VI. These regulations prohibit recipients from "restrict[ing] an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program" and "utiliz[ing] criteria or methods of administration which have the effect of subjecting individuals to discrimination" or have "the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects individuals of a particular race, color, or national origin."

In *Lau v. Nichols*, 414 U.S. 563 (1974), the Supreme Court interpreted these provisions as requiring that a federal financial recipient take steps to ensure that language barriers did not exclude LEP persons from effective participation in its benefits and services. *Lau* involved a group of students of Chinese origin who did not speak English to whom the recipient provided the same services—an education provided solely in English—that it provided students who did speak English. The Court held that, under these circumstances, the school's practice violated the Title VI prohibition against discrimination on

¹ 42 U.S.C. § 2000d-1 note.

² 28 C.F.R. § 0.51.

³ Department of Education policies regarding the Title VI responsibilities of public school districts with respect to LEP children and their parents are reflected in three Office for Civil Rights policy documents: (1) the May 1970 memorandum to school districts, "Identification of Discrimination and Denial of Services on the Basis of National Origin," (2) the December 3, 1985, guidance document, "The Office for Civil Rights' Title VI Language Minority Compliance Procedures," and (3) the September 1991 memorandum, "Policy Update on Schools Obligations Toward National Origin Minority Students with Limited English Proficiency." These documents can be found at the Department of Education website at www.ed.gov/office/OCR.

⁴ The Department of Health and Human Services is issuing policy guidance titled: "Title VI Prohibition Against National Origin Discrimination As It Affects Persons With Limited English Proficiency." This policy addresses the Title VI responsibilities of HHS recipients to individuals with limited English proficiency.

the basis of national origin. The Court observed that “[i]t seems obvious that the Chinese-speaking minority receive fewer benefits than the English-speaking majority from respondents’ school system which denies them a meaningful opportunity to participate in the educational program—all earmarks of the discrimination banned by” the Title VI regulations.⁵ Courts have applied the doctrine enunciated in *Lau* both inside and outside the education context. It has been considered in contexts as varied as what languages drivers’ license tests must be given in or whether material relating to unemployment benefits must be given in a language other than English.⁶

Link Between National Origin And Language

For the majority of people living in the United States, English is their native language or they have acquired proficiency in English. They are able to participate fully in federally assisted programs and activities even if written and oral communications are exclusively in the English language.

The same cannot be said for the remaining minority who have limited English proficiency. This group includes persons born in other countries, some children of immigrants born in the United States, and other non-English or limited English proficient persons born in the United States, including some Native Americans. Despite efforts to learn and master English, their English language proficiency may be limited for some time.⁷ Unless grant recipients take steps to respond to this difficulty, recipients effectively may deny those who do not

⁵ 414 U.S. at 568. Congress manifested its approval of the *Lau* decision requirements concerning the provision of meaningful education services by enacting provisions in the Education Amendments of 1974, Pub. L. No. 93-380, §§ 105, 204, 88 Stat. 503-512, 515 codified at 20 U.S.C. 1703(f), and the Bilingual Education Act, 20 U.S.C. 7401 *et seq.*, which provided federal financial assistance to school districts in providing language services.

⁶ For cases outside the educational context, *see, e.g., Sandoval v. Hagan*, 7 F. Supp. 2d 1234 (M.D. Ala. 1998), *affirmed*, 197 F.3d 484, (11th Cir. 1999), *rehearing and suggestion for rehearing en banc denied*, 211 F.3d 133 (11th Cir. Feb. 29, 2000) (Table, No. 98-6598-II), *petition for certiorari filed* May 30, 2000 (No. 99-1908) (giving drivers’ license tests only in English violates Title VI); and *Pabon v. Levine*, 70 F.R.D. 674 (S.D.N.Y. 1976) (summary judgment for defendants denied in case alleging failure to provide unemployment insurance information in Spanish violated Title VI).

⁷ Certainly it is important to achieve English language proficiency in order to fully participate at every level in American society. As we understand the Supreme Court’s interpretation of Title VI’s prohibition of national origin discrimination, it does not in any way disparage use of the English language.

speak, read, or understand English access to the benefits and services for which they qualify.

Many recipients of federal financial assistance recognize that the failure to provide language assistance to such persons may deny them vital access to services and benefits. In some instances, a recipient’s failure to remove language barriers is attributable to ignorance of the fact that some members of the community are unable to communicate in English, to a general resistance to change, or to a lack of awareness of the obligation to address this obstacle.

In some cases, however, the failure to address language barriers may not be simply an oversight, but rather may be attributable, at least in part, to invidious discrimination on the basis of national origin and race. While there is not always a direct relationship between an individual’s language and national origin, often language does serve as an identifier of national origin.⁸ The same sort of prejudice and xenophobia that may be at the root of discrimination against persons from other nations may be triggered when a person speaks a language other than English.

Language elicits a response from others, ranging from admiration and respect, to distance and alienation, to ridicule and scorn. Reactions of the latter type all too often result from or initiate racial hostility * * *. It may well be, for certain ethnic groups and in some communities, that proficiency in a particular language, like skin color, should be treated as a surrogate for race under an equal protection analysis.⁹

While Title VI itself prohibits only intentional discrimination on the basis of national origin,¹⁰ the Supreme Court has consistently upheld agency regulations prohibiting unjustified discriminatory effects.¹¹ The Department of Justice has consistently adhered to the view that the significant

⁸ As the Supreme Court observed, “[l]anguage permits an individual to express both a personal identity and membership in a community, and those who share a common language may interact in ways more intimate than those without this bond.” *Hernandez v. New York*, 500 U.S. 352, 370 (1991) (plurality opinion).

⁹ *Id.* at 371 (plurality opinion).

¹⁰ *Alexander v. Choate*, 469 U.S. 287, 293 (1985).

¹¹ *Id.* at 293-294; *Guardians Ass’n v. Civil Serv. Comm’n*, 463 U.S. 582, 584 n.2 (1983) (White, J.), 623 n.15 (Marshall, J.), 642-645 (Stevens, Brennan, Blackmun, JJ.); *Lau v. Nichols*, 414 U.S. at 568; *id.* at 571 (Stewart, J., concurring in result). In a July 24, 1994, memorandum to Heads of Departments and Agencies that Provide Federal Financial Assistance concerning “Use of the Disparate Impact Standard in Administrative Regulations Under Title VI of the Civil Rights Act of 1964,” the Attorney General stated that each agency “should ensure that the disparate impact provisions of your regulations are fully utilized so that all persons may enjoy equally the benefits of federally financed programs.”

discriminatory effects that the failure to provide language assistance has on the basis of national origin, places the treatment of LEP individuals comfortably within the ambit of Title VI and agencies’ implementing regulations.¹² Also, existing language barriers potentially may be rooted in invidious discrimination. The Supreme Court in *Lau* concluded that a recipient’s failure to take affirmative steps to provide “meaningful opportunity” for LEP individuals to participate in its programs and activities violates the recipient’s obligations under Title VI and its regulations.

All Recipients Must Take Reasonable Steps To Provide Meaningful Access

Recipients who fail to provide services to LEP applicants and beneficiaries in their federally assisted programs and activities may be discriminating on the basis of national origin in violation of Title VI and its implementing regulations. Title VI and its regulations require recipients to take reasonable steps to ensure “meaningful” access to the information and services they provide. What constitutes reasonable steps to ensure meaningful access will be contingent on a number of factors. Among the factors to be considered are the number or proportion of LEP persons in the eligible service population, the frequency with which LEP individuals come in contact with the program, the importance of the service provided by the program, and the resources available to the recipient.

(1) Number or Proportion of LEP Individuals

Programs that serve a few or even one LEP person are still subject to the Title VI obligation to take reasonable steps to provide meaningful opportunities for access. However, a factor in determining the reasonableness of a recipient’s efforts is the number or proportion of people who will be excluded from the benefits or services absent efforts to remove language barriers. The steps that are reasonable for a recipient who serves one LEP person a year may be different than those expected from a recipient that serves several LEP persons each day. But even those who serve very few LEP persons on an infrequent basis should utilize this balancing analysis to determine whether reasonable steps are

¹² The Department’s position with regard to written language assistance is articulated in 28 CFR § 42.405(d)(1), which is contained in the Coordination Regulations, 28 CFR Subpt. F, issued in 1976. These Regulations “govern the respective obligations of Federal agencies regarding enforcement of title VI.” 28 CFR § 42.405. Section 42.405(d)(1) addresses the prohibitions cited by the Supreme Court in *Lau*.

possible and if so, have a plan of what to do if a LEP individual seeks service under the program in question. This plan need not be intricate; it may be as simple as being prepared to use one of the commercially available language lines to obtain immediate interpreter services.

(2) *Frequency of Contact with the Program*

Frequency of contacts between the program or activity and LEP individuals is another factor to be weighed. For example, if LEP individuals must access the recipient's program or activity on a daily basis, e.g., as they must in attending elementary or secondary school, a recipient has greater duties than if such contact is unpredictable or infrequent. Recipients should take into account local or regional conditions when determining frequency of contact with the program, and should have the flexibility to tailor their services to those needs.

(3) *Nature and Importance of the Program*

The importance of the recipient's program to beneficiaries will affect the determination of what reasonable steps are required. More affirmative steps must be taken in programs where the denial or delay of access may have life or death implications than in programs that are not as crucial to one's day-to-day existence. For example, the obligations of a federally assisted school or hospital differ from those of a federally assisted zoo or theater. In assessing the effect on individuals of failure to provide language services, recipients must consider the importance of the benefit to individuals both immediately and in the long-term. A decision by a federal, state, or local entity to make an activity compulsory, such as elementary and secondary school attendance or medical inoculations, serves as strong evidence of the program's importance.

(4) *Resources Available*

The resources available to a recipient of federal assistance may have an impact on the nature of the steps that recipients must take. For example, a small recipient with limited resources may not have to take the same steps as a larger recipient to provide LEP

assistance in programs that have a limited number of eligible LEP individuals, where contact is infrequent, where the total cost of providing language services is relatively high, and/or where the program is not crucial to an individual's day-to-day existence. Claims of limited resources from large entities will need to be well-substantiated.¹³

Written vs. Oral Language Services

In balancing the factors discussed above to determine what reasonable steps must be taken by recipients to provide meaningful access to each LEP individual, agencies should particularly address the appropriate mix of written and oral language assistance. Which documents must be translated, when oral translation is necessary, and whether such services must be immediately available will depend upon the factors previously mentioned.¹⁴ Recipients often communicate with the public in writing, either on paper or over the Internet, and written translations are a highly effective way of communicating with large numbers of

¹³ Title VI does not require recipients to remove language barriers when English is an essential aspect of the program (such as providing civil service examinations in English when the job requires person to communicate in English, see *Frontera v. Sindell*, 522 F.2d 1215 (6th Cir. 1975)), or there is another "substantial legitimate justification for the challenged practice." *Elston v. Talladega County Bd. of Educ.*, 997 F.2d 1394, 1407 (11th Cir. 1993). Similar balancing tests are used in other nondiscrimination provisions that are concerned with effects of an entity's actions. For example, under Title VII of the Civil Rights Act of 1964, employers need not cease practices that have a discriminatory effect if they are "consistent with business necessity" and there is no "alternative employment practice" that is equally effective. 42 U.S.C. § 2000e-2(k). Under Section 504 of the Rehabilitation Act, 29 U.S.C. § 794, recipients do not need to provide access to persons with disabilities if such steps impose an undue burden on the recipient. *Alexander v. Choate*, 469 U.S. at 300. Thus, in situations where all of the factors identified in the text are at their nadir, it may be "reasonable" to take no affirmative steps to provide further access.

¹⁴ Under the four-part analysis, for instance, Title VI would not require recipients to translate documents requested under a state equivalent of the Freedom of Information Act or Privacy Act, or to translate all state statutes or notices of rulemaking made generally available to the public. The focus of the analysis is the nature of the information being communicated, the intended or expected audience, and the cost of providing translations. In virtually all instances, one or more of these criteria would lead to the conclusion that recipients need not translate these types of documents.

people who do not speak, read or understand English. While the Department of Justice's Coordination Regulation, 28 CFR § 42.405(d)(1), expressly addresses requirements for provision of written language assistance, a recipient's obligation to provide meaningful opportunity is not limited to written translations. Oral communication between recipients and beneficiaries often is a necessary part of the exchange of information. Thus, a recipient that limits its language assistance to the provision of written materials may not be allowing LEP persons "effectively to be informed of or to participate in the program" in the same manner as persons who speak English.

In some cases, "meaningful opportunity" to benefit from the program requires the recipient to take steps to assure that translation services are promptly available. In some circumstances, instead of translating all of its written materials, a recipient may meet its obligation by making available oral assistance, or by commissioning written translations on reasonable request. It is the responsibility of federal assistance-granting agencies, in conducting their Title VI compliance activities, to make more specific judgments by applying their program expertise to concrete cases.

Conclusion

This document provides a general framework by which agencies can determine when LEP assistance is required in their federally assisted programs and activities and what the nature of that assistance should be. We expect agencies to implement this document by issuing guidance documents specific to their own recipients as contemplated by the Department of Justice Coordination Regulations and as HHS and the Department of Education already have done. The Coordination and Review Section is available to assist you in preparing your agency-specific guidance. In addition, agencies should provide technical assistance to their recipients concerning the provision of appropriate LEP services.

[FR Doc. 00-20867 Filed 8-15-00; 8:45 am]

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APPENDIX D. REAL PROPERTY ACQUISITION DOCUMENTATION CHECKLIST

The following items are required documents to indicate compliance with Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended. Please submit **one copy** of each item to the Grants Management Section (GMS), at the email address below. Use this checklist to ensure that you've included all required documentation.

LWCF Planner

mspgrants@dnr.mo.gov

- Title Search/Title Clearance Report** identifying owner of the property, any liens or restrictions on the property, or any rights or interests held by others. Original to be kept by the project sponsor, with a copy sent to GMS.
- Notice of Interest** in real property sent to the landowner, with a copy of the letter retained by the project sponsor and a copy sent to GMS. The letter must include a statement of landowner rights. In the absence of the sponsor's own written guidelines for compliance with the Uniform Act and all applicable state and local requirements, the sponsor should enclose copies of the following booklets provided by the Federal Highway Administration, as appropriate: "Acquisition: Acquiring Real Property for Federal and Federal-Aid Programs and Projects" (http://www.fhwa.dot.gov/real_estate/uniform_act/acquisition/acquisition.pdf) and "Relocation: Your Rights and Benefits as a Displaced Person under the Federal Relocation Assistance Program" (https://www.fhwa.dot.gov/real_estate/publications/your_rights/rights2014.pdf).
- Evidence of Relocation Benefits Explanation** provided to any person or business being displaced by the acquisition. A copy of "Relocation: Your Rights and Benefits as a Displaced Person under the Federal Relocation Assistance Program" should be provided to anyone being displaced by the acquisition.
- Appraisal Report or Waiver Valuation**, the original retained by the sponsor, a copy given to the landowner and a copy sent to GMS. Property that is valued less than \$10,000 may not require an appraisal and may only require a waiver valuation. A sample Waiver Valuation is provided in this appendix.
- Relocation Plan** for any persons displaced by the acquisition, as appropriate. The plan should include the number of individuals, businesses or farms being displaced, and should include relocation services and benefits being provided.
- Review Appraisal Report** by a certified review appraiser. The original should be retained by the project sponsor and a copy sent to the landowner and GMS.
- Written Offer of Just Compensation** and all required attachments sent to the landowner, with a copy kept by the project sponsor and a copy sent to GMS. A sample Offer of Just Compensation is provided in this appendix.
- Written Statement of Just Compensation** sent to the landowner, with a copy kept by the sponsor and a copy sent to GMS. A sample is provided in this appendix.
- Waiver of Right to Just Compensation** signed by the landowner, indicating voluntary donation of the property, either in part or a full donation. A sample is provided in this appendix. Signed originals should be kept by the sponsor and the landowner, with a copy sent to GMS.
- Statement of Justification of Difference in Value** must be submitted to GMS, when the negotiated price is more than the approved appraised value. This statement should relay the history of negotiations between the sponsor and the landowner, the importance of the proposed purchase as opposed to alternative sites, or other justification regarding the need to purchase the property at higher than appraised value.
- Record the deed.** Once the sponsor has paid the negotiated purchase price, any closing costs, relocation benefits, etc. and taken title to the property, the deed must be recorded with the Records Officer and a copy submitted to GMS. Sponsors must include the Declaration of Deed Restriction indicating that land will remain in public outdoor recreation use in perpetuity. The deed must also include a non-discrimination statement as required by 43 CFR part 17. Sample declaration is found in Appendix G.

D. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970

1. Purpose. This section provides guidance for the application of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. § 4601 et seq.), (Uniform Act) and its implementing regulations (49 C.F.R. Part 24) to federally assisted projects through the LWCF.

The Uniform Act provides for the uniform and equitable treatment of persons displaced from their homes, businesses, or farms by federal and federally assisted programs and establishes uniform and equitable land acquisition policies for federal and federally assisted programs, such as the LWCF.

a. Displaced persons. The Uniform Act seeks to ensure that persons displaced as a direct result of federal or federally assisted projects are treated fairly, consistently, and equitably so such displaced persons will not suffer disproportionate injuries as a result of projects designed for the benefit of the public as a whole. In this regard, the provisions of the Uniform Act and its implementing regulations apply to State and local government agencies receiving federal financial assistance for public projects that require the acquisition of real property regardless of funding source. The acquisition itself does not

need to be federally funded for the rules to apply. If federal LWCF funds are used in any phase of the project, such as subsequent LWCF-assisted development as described in Section 5 below, States must comply with the rules of the Uniform Act.

b. Real property acquisition. The Uniform Act seeks to ensure that owners of real property to be acquired for federal and federally-assisted projects are treated fairly and consistently, to encourage and expedite acquisition by agreements with such owners, to minimize litigation and relieve congestion in the courts, and to promote public confidence in federal and federally-assisted land acquisition programs. See Section 7 below for further guidance on real property acquisitions.

2. State responsibility. The State is responsible for implementing the provisions of the Uniform Act pursuant to 49 C.F.R. Part 24. The SLO must keep participating State agencies and local governments advised on, and assure compliance with, all relocation and acquisition matters as they relate to the Uniform Act and these procedures. For LWCF project approval, this State assurance is incorporated into the general provisions included with every project agreement:

The State will comply with the terms of Title II and Title III, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Public Law 91-646, 94 Stat. 1894 (1970)), and the applicable regulations and procedures implementing such Act for all real property acquisitions and where applicable shall assure that the Act has been complied with for property to be developed with assistance under the project agreement.

3. State documentation requirements for displaced persons. Except for Items "e" and "g" below, the State is required to keep the following documentation in its own LWCF project files and make it available upon request during program reviews, for audit purposes, and in response to NPS information requests. The State must submit copies of the "Statement of Difference in Value and Waivers" to the NPS prior to project completion.

- a. An estimate of the number of individuals, families, businesses, and farms being displaced.
- b. Appraisal documentation including review material and the State's written approval of the appraisal report.
- c. Copy of the written offer to purchase including a statement of just compensation.
- d. Relocation Plan, advisory services program, and appeals procedure where displacement occurred.
- e. Statement of difference in value if the purchase price is greater than the approved appraisal of fair market value.
- f. Documentation showing the owner or owner's designated representative has been given an opportunity to accompany the appraiser during his inspection of the property.
- g. Evidence that occupants of property acquired were furnished at the time of initiation of negotiations adequate information explaining their eligibility to payments under Title II of the Uniform Act
- h. Copies of waivers where applicable.
- i. Appropriate claims forms and supporting documentation.
- j. Evidence of purchase price and of title.

4. State relocation assistance advisory services. States shall carry out a relocation assistance advisory program that includes, in part, determining the relocation needs of each person to be displaced and providing an explanation of payments and other assistance for which the person may be eligible. All services required by Title II, Section 205 of the Uniform Act must be provided by the State or local sponsor.

5. Relocation benefits to displaced persons. The State must make available relocation benefits to persons displaced from any site that at the time of acquisition with or without LWCF assistance (or at any time thereafter prior to actual displacement) was planned as the site of a federally assisted project as follows:

a. If the acquisition or displacement occurred within the two years preceding the time the State submits its application for federal financial assistance to the NPS, the State must provide the assurances required by Sections 210 and 305 of Public Law 646, unless the State can provide to the NPS documented evidence that at the time of the acquisition and last displacement, planning activity to obtain the particular federal assistance being applied for had not yet been initiated.

b. When the acquisition or displacement occurred more than two (2) years, but less than five (5) years before the State submits an application for federal financial assistance, that same assurance must be provided by the State, unless a written certification is provided as part of the project application by the head of the State or local government agency sponsoring the project. The certification will indicate, under penalty for willful misstatement (18 U.S.C. § 1001), that the State or local government had not yet initiated planning activities for the application to obtain federal assistance at the time of the acquisition and last known displacement. The intent of this certification is for the State to provide an affirmative demonstration the acquisition was not the first step in a logical or foreseen planning of a project requiring federal financial assistance.

c. If the acquisition and last displacement occurred more than five (5) years before the State applies for federal financial assistance, the State need not provide the assurances required by Sections 210 and 305 of the Uniform Act nor the certification discussed above, unless the NPS has evidence to indicate that at the time of the acquisition and last known displacement, the State or local government had initiated planning activity for the application to obtain the particular federal assistance. In such case, Sections 210 and 305 assurances will be required. This is because it is assumed after five (5) years it is unreasonable to assume there was intent to seek financing of a development project at the time of acquisition or an intent to deny relocation benefits.

d. The States shall keep relocation certifications and related records in its own LWCF project files and make them available for inspection at the request of NPS.

6. Displaced applicant appeals process. Situations may occur when an applicant for payments under the Uniform Act will be aggrieved by a displacing agency's determination as to the applicant's eligibility for payment or the amount of the payment. Each State shall establish procedures that provide for adequate review by the involved State agency of the concerns of the person aggrieved. The procedures should assure that aggrieved persons may have their applications reviewed by the head of the State agency. The procedures should also provide for an appeals process that can be followed should decisions remain disputed following review by the head of the State agency.

7. Real property acquisition.

a. Methods of acquisition. Acquisition of land and water, or interests therein, may be accomplished through purchase, transfer, or by gift. Acquisition through the exercise of the right of eminent domain is allowable only with agreement from the property owner (see Chapter 3.B.2). The NPS encourages public policies and procedures for the acquisition of real property that are fair and consistent, and directed

toward giving the property owner the full measure of compensation authorized by law, promptly, with a minimum of inconvenience, and without prolonged negotiation or costly litigation. Federally assisted acquisitions shall be guided by the policies found in Title III of the Uniform Act.

(1) The Federal Government will not obtain a legal right or title to any area or facility acquired with LWCF assistance. The State must have on file satisfactory evidence of the purchase price and a description of the character and nature of the title received by the project sponsor before requesting reimbursement from the NPS.

(2) Evidence of title, such as a written statement by the State Attorney General, title insurance, or other means considered reasonable and adequate, must also be available to the SLO before requesting reimbursement from the NPS.

(3) Requests for payment certified by the SLO will be acceptable evidence of the purchase price and that the State has on file all the required documents, including those required by Public Law 91-646.

(4) A survey may be required by the NPS to confirm the exact location and size of the tract being acquired.

b. State responsibility. The State will have responsibility for providing guidance to appraisers on appraisal requirements for federally assisted acquisitions, for ensuring appraisals are reviewed by State-certified review appraisers pursuant to the Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA), and for approving appraisals. The State must certify the appraisals meet the federal appraisal standards as described in below. A certification statement is included in the A&R and C&S Forms for States to certify appraisals and waiver valuations.

The NPS will conduct spot check reviews of appraisals as needed and will review the State's LWCF appraisal review process as part of a State program review to assure compliance with the LWCF requirements and federal appraisal standards. The NPS may request appraisal review assistance from the DOI's Appraisal Valuations and Services Office (AVSO) as needed. When the appraisal review results in substantive concerns as to the adequacy of an approved appraisal, the SLO will be responsible for providing NPS (or AVSO) with supplemental appraisal documentation or a new appraisal in accordance with the review findings. The value established by the revised or new appraisal will be used as the basis for determining just compensation and matching assistance.

c. Appraisal standards. Pursuant to the LWCF conversion requirements at 36 C.F.R. § 59.3 and the Financial Assistance Interior Regulation (FAIR) at 2 C.F.R. § 1402.329, the UASFLA, commonly referred to as the "Yellow Book," shall be used by State and local appraisers in the preparation of appraisals for federal LWCF-assisted acquisitions, donations if used for a federal match, and land exchanges for conversions. Because the appraisals for federal government acquisitions purposes, including federally assisted acquisitions, are bound by federal law relating to the valuation of real estate, it is necessary to apply the UASFLA as warranted by the conditions of the federal appraisal assignment.

The federal standards (i.e., UASFLA) are considered "Supplemental Standards" to the Uniform Standards of Professional Appraisal Practice (USPAP) and are required to bolster the minimum level of documentation and yield compliance with the unique and applicable appraisal methods and procedures that have evolved from federal case law. The current UASFLA edition is available on-line. The USPAP is updated every two years.

(1) UASFLA and USPAP. Appraisal preparation, documentation and reporting shall be in conformance with the UASFLA, which are generally compatible with standards and practices of both the appraisal industry and the USPAP. However, USPAP compliance alone will not result in UASFLA compliance. The project sponsor must recognize the differences between the UASFLA and USPAP and ensure the appraiser meets the higher standards of the UASFLA, except where noted below.

The UASFLA incorporates, by reference, most of the provisions found in the USPAP, however, UASFLA is a more detailed and rigorous standard. The UASFLA does deviate from the USPAP on certain occasions. Therefore, it may be necessary to invoke USPAP's "Jurisdictional Exception Rule" when preparing a UASFLA-complying report. This allows USPAP standards to conform to overriding federal law relating to the valuation of real estate for LWCF federally assisted acquisition and LWCF conversion purposes. Consult the 2016 edition of UASFLA in Section 1.2.7.2. for a discussion of the minor conflicts between the UASFLA and the USPAP.

The major difference between the USPAP and the UASFLA is the UASFLA mandated procedure of valuing partial takings by utilizing the "before and after" method of analysis. This method addresses the loss of market value suffered by the large parcel as a result of the loss of the real property rights in question. "Severance damages" and "special benefits" affecting the remaining real property are automatically addressed through this appraisal method. The USPAP provides no specific guidance with respect to this issue. Lacking specific guidance, most USPAP appraisal reports simply address the value of the real property rights acquired by the grantee and not the overall diminution suffered (or, perhaps, enhancement realized) by the property from which it was acquired. Thus, a landowner, under certain circumstances, may end up "short changed" or unjustly enriched as a result of the lack of direction given in the USPAP in an involuntary or condemnation type acquisition. The reason for this UASFLA requirement is fairness to all concerned parties. Except for appraisal problems associated with conversions of LWCF-assisted lands, the "before and after" method is required for LWCF appraisals.

Appraisers are obligated to be familiar with the entire UASFLA standard before bidding on an appraisal assignment and/or preparing the appraisal report.

(2) Specific UASFLA policies and guidance for LWCF appraisal problems.

i. There are two written reporting options established under USPAP: an appraisal report and a restricted appraisal report. In addition, USPAP permits an appraiser to provide an oral report. For the reasons discussed in UASFLA Sections 2.2.1 and 2.2.2 (2016), oral reports and restricted appraisal reports are not permitted under UASFLA. The reporting format set forth under Sections 2.3 is consistent with and/or exceed the requirements for an appraisal report under Standard 2 of USPAP.

See Sections 1 and 2 A of the UASFLA (2016) for details on data documentation and appraisal reporting standards. All appraisals are to include the required certification statement found in Section 2.3.1.4. UASFLA (2016) contains an Appraisal Report Documentation Checklist in Appendix A and a Recommended Format for Federal Appraisal Reports in Appendix B and C.

ii. The appraiser's estimate of highest and best use must be an "economic" use. A non-economic highest and best use, such as "conservation," "natural lands," "preservation," or any use which requires the property to be withheld from economic production in

perpetuity, is not a valid use upon which to estimate market value. Therefore, any appraisal based on such a non-economic highest and best use will not be approved for federal land acquisition purposes.

In this same regard, an appraiser's use of any definition of highest and best use which incorporates non-economic considerations (e.g., value to the public, value to the government, or community development goals) will render the appraisal unacceptable for LWCF purposes. (Section 4.3.2.3, UASFLA, 2016).

iii. For acquisitions not associated with LWCF conversions and replacement land, the "before and after" method of valuation is required if the proposed acquisition is something less than the entire ownership. For example, if the proposed acquisition is a 20-acre parcel and the larger property is a 100-acre property, the required method of analysis is to value the 100-acre property in the "before" condition and then value the 80-acre parcel in the "after" condition.

The value of the acquisition is then determined by subtracting the latter value estimate from the former value estimate. Improvements that are unaffected by the partial acquisition, either positively or negatively, need not be valued as long as the appraiser states that to be the case and the property is not to be acquired through condemnation.

iv. The use to which the grantee will put the property after it has been acquired is, as a general rule, an improper highest and best use. It is the value of the land acquired that is to be estimated, not the value of the land to the government. If it is solely the government's need that creates a market for the land, this special need must be excluded from consideration by the appraiser." (Section 1.4.5. UASFLA, 2016).

v. The UASFLA contains a unique definition of market value (Section 1.2.4. UASFLA, 2016).

vi. The UASFLA contains a unique certification statement (Section 2.3.1.4.A-4 of the UASFLA, 2016).

vii. Estimates of "marketing time" and "exposure time" are not appropriate and should not be reported in UASFLA-complying reports. The exclusion of the estimate of "exposure time" may be considered a Jurisdictional Exception to the USPAP. (See Sections 1.2.7.2. and 1.2.4. of the UASFLA, 2016). However, the USPAP version effective July 1, 2006 no longer specifies the reporting of exposure time in Standard 2, "Real Property Appraisal Reporting," but does refer to the development of an opinion of exposure time in the "Comment" following S.R. 1-2(c)(iv) as well as in SMT-6. "Marketing time" is no longer mandated, to any extent, in the aforementioned edition of the USPAP.)

viii. Because LWCF conversions are land exchanges, the following policies shall apply:

(a) For partial takings, "part taken" appraisals shall be prepared for the subject parcels rather than employing the classic "before and after" appraisal methodology described above. This is necessary to avoid consequential value distortions that would logically occur as a result of appraisement of partial takings within parent parcels of greatly differing sizes. For example, if a park (conversion) property under appraisement is a five-acre tract within a 1,000-acre larger property and the replacement property (non-park property) is a 5-acre tract within an otherwise

similar 8-acre larger parcel, an equal value conclusion would be extremely improbable, and such an appraisal procedure might very well result in an "equal value" exchange of a conversion property being several times the size, and perhaps several times the value (if viewed from the perspective of being a stand-alone parcel), of the replacement property.

(b) In order to determine the highest and best use of the park property, the appraiser is to ignore the actual zoning of the property if the zoning is a non-economic zoning established to recognize the "open space" characteristics of the park or to foster the preservation of the park. In this situation, the appraiser is to determine the most likely zoning that would have come about under the hypothetical condition the park was never created. In so doing, the appraiser will consider likely property uses based upon all germane factors as well as the actual present zoning of comparable, nearby, privately owned properties. Under this scenario, the cost, risk and time associated with obtaining a zoning change would not be appropriate. This procedure is necessary to avoid penalizing the conversion property because it was taken out of private ownership and dedicated to a non-economic use.

(c) The same valuation method shall be used on both the converted parcel and the replacement parcels.

ix. The owner or the owner's designated representative must be given an opportunity to accompany the appraiser during his or her inspection of the property. (Section 1.2.6.4. of the UASFLA, 2016).

d. Appraisal value estimate under \$10,000. If the State determines an appraisal is unnecessary because the valuation problem is uncomplicated and the estimated value of the real property is \$10,000 or less based on a review of available data, the State may unilaterally waive the appraisal and instead prepare a waiver valuation per 49 C.F.R. § 24.102(c)(2)(ii). The State is permitted to raise the waiver valuation cap up to \$25,000 provided the acquiring agency offers the owner the option to have an appraisal, and the owner elects to have the agency prepare a waiver valuation instead. Thus, the State may increase the \$10,000 cap to \$25,000 with the consent of the landowner.

The person preparing the waiver valuation must have sufficient understanding of the local real estate market to be qualified, and shall not have any interest, direct or indirect, in the real property being valued for compensation. Further guidance on waiver valuations is published by the Federal Highway Administration.

e. Conflict of interest. No person shall attempt to unduly influence or coerce an appraiser, review appraiser, or waiver valuation preparer regarding any valuation or other aspect of an appraisal, review, or waiver valuation. Persons functioning as negotiators may not supervise or formally evaluate the performance of any appraiser or review appraiser performing appraisal or appraisal review work, except that, for a program or project receiving federal financial assistance, the federal funding agency may waive this requirement if it determines it would create a hardship for the agency. [See 49 C.F.R. § 24.102(n)(2).]

f. Basis for LWCF matching assistance. The project sponsor must secure at least one appraisal by a qualified appraiser or document the value using the waiver valuation method for each parcel to be acquired. Generally, the fair market value (FMV) or waiver value will be used as the basic measure of

LWCF assistance on acquisitions. LWCF assistance shall be based upon evidence of this value.

Properly documented costs of severance damage may be matched. Severance damage is the diminution in value of the remaining land due to the particular land taken and is considered to be an inherent part of just compensation.

The LWCF Act precludes using Fund assistance for incidental costs relating to acquisition.

Settlement may occur after the LWCF project agreement has been signed by NPS.

g. Acquisition by donation. An appraisal prepared according to the UASFLA or a waiver valuation is required for all projects involving the donation of real property or interests therein for determining the federal matching share. For guidance on waiver valuations for real property with an estimated value under \$10,000 (or \$25,000), see Item "d" above.

1. Partial donations/Acquisition at less than just compensation. Only in unusual circumstances (e.g. bargain sales, donations, etc.) will real property be acquired at less than established just compensation as determined by an approved appraisal. For partial donations, documentation must include evidence the owner has been provided with a statement of just compensation. A written statement by the owner that she or he is making a partial donation is also required.

2. To determine the amount eligible for matching a LWCF project, an approved appraisal is still necessary.

h. When State request for LWCF assistance is different than appraised value. An appraisal should be an acceptable estimate of property value if competently compiled by a qualified appraiser. However, it cannot be assumed to be an absolute statement of value. The approved appraisal value is the basis for establishing the amount of just compensation offered to the owner (seller) at the initiation of negotiations. The negotiation between a willing seller and a willing buyer will often set a price that is higher than the appraisal, and this marketplace value must be considered with the appraised value in establishing the reasonable limits of LWCF assistance.

When the State believes the administrative settlement is an adequate indication of market value, yet it is higher than the approved appraised value, a detailed and well documented statement on this difference with all pertinent appraisal documents must be submitted before reimbursement is requested. This statement should explain why the appraisal may not reflect the market value, what steps the project sponsor took to establish the value, and include adequate market data to substantiate the value conclusion. If the NPS agrees the administrative settlement represents a reasonable estimate of the property, that amount will be eligible for assistance.

i. Acquisition of less-than-fee interests. In certain instances, the purchase of less than fee title may be permissible (see Chapter 3). The acquisition of easements, rights-of-way, etc., will be viewed in the same light as fee acquisitions. Documentation of value by appraisal will be the same. The project proposal should adequately explain why lesser interests are to be acquired.

j. Judicial decisions. When lands are acquired through judicial proceedings, the price determined by the court will be accepted by NPS in lieu of any previous NPS or State approved appraised value.

k. Responsibility for quieting title or for replacement of properties acquired with defective title. The State is responsible for quieting claims against title and for replacing property found to have defective title

with other properties if this occurs after project completion, pursuant to the conversion requirements at 36 C.F.R. § 59.3. If discovery occurs prior to project completion, the LWCF project may be terminated for cause (see Chapter 7).

**NOTICE OF INTEREST
(SAMPLE)**

Date

Name of Landowner

Address

City, State ZIP

Dear _____ (*Name of Landowner*),

On behalf of _____ (*Name of Project Sponsor*), I am writing to inform you of our interest in acquiring the property located at _____ (*Address of Property*), further described as _____ (*Legal Description of Property*) _____. Our records indicate the property is owned by _____ (*Name of Landowner*). Acquiring the property will allow us to develop _____ (*Name of Project*).

We have received funds through the National Park Service's (NPS) Land & Water Conservation Fund (LWCF) to develop this project. Because federal funds are being used for the project, it is subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended. To help you understand your rights under the act, we have enclosed two informational booklets. Under the act, you are entitled to just compensation based on the fair market value of your property. Additionally, you and any tenant currently on the property may be eligible for relocation assistance.

We are hopeful that, because of the benefits to be derived from the project, we can reach an agreement with you to acquire the land and/or property rights needed to accomplish the project. If you would be interested in discussing acquisition options, please contact _____ (*Name of Project Sponsor's Representative*) at _____ (*Phone Number/Email Address*). They will outline the next steps of the process.

Thank you very much for your consideration of our proposal.

Sincerely,

Signature of Project Sponsor's Authorized Representative

Title of Project Sponsor's Authorized Representative

c: LWCF Planner, Missouri Department of Natural Resources, Division of State Parks

Enclosures: "Acquisition: Acquiring Real Property for Federal and Federal-Aid Programs and Projects"
"Relocation: Your Rights and Benefits as a Displaced Person under the Federal Relocation Assistance Program"

**WAIVER VALUATION
(SAMPLE)**

Project Name _____
Parcel Address _____
Parcel Number _____
County _____

Property Owner _____
Owner's Address _____

Date Owner Invited To Accompany Person _____
Assessing Value: _____

Identification of Property _____

Lot: _____ Zoning: _____ Area _____ Sq. Ft.: _____ Acres: _____

Past Sales of Property (5 years): _____

Improvements to Property since Last Sale:

Description of Acquisition : _____

Calculation of Value of Land to be Acquired:

Land: _____ acres at \$_____/per acres = \$_____

Basis for Value:

Calculation of Value of Improvements to be Acquired:

Type of Improvement: _____ = \$_____

Type of Improvement: _____ = \$_____

Type of Improvement: _____ = \$_____

Basis for Value:

Final Value Estimate:

Land Value \$_____ + Value of Improvements \$_____ = \$_____

Prepared by: _____

Date: _____

Signature of Preparer: _____

Required Attachments:

Site Plan

Photograph of Acquisition Area

Comparable Sale or Other Value Support

**WRITTEN OFFER OF JUST COMPENSATION
(SAMPLE)**

Date

Name of Landowner

Address

City, State ZIP

Dear _____ *(Name of Landowner)* _____,

On behalf of _____ *(Name of Project Sponsor)* _____, I am writing this Offer of Just Compensation for the property located at _____ *(Address of Property)* _____, further described as _____ *(Legal Description of Property)* _____.

We have had the property appraised by a licensed appraiser and this report has been thoroughly analyzed by a certified review appraiser and found to be well-supported. Please find enclosed a copy of the appraisal and appraisal review. A Statement of Just Compensation is also enclosed, that provides the basis for the Offer of Just Compensation. Based on the appraisal and review, _____ *(Name of Project Sponsor)* _____ hereby makes you an offer in the amount of \$ _____ *(Appraised Value)* _____ for the purchase of your property. Relocation benefits to which you may be entitled are in addition to the acquisition price of your property.

If this offer meets with your approval, or if you have any questions, please contact _____ *(Name of Project Sponsor's Representative)* _____ at _____ *(Phone Number/Email Address)* _____. Our staff has prepared _____ *(Description of Conveyance Documents)* _____ to assist in finalizing the acquisition.

Thank you very much for your cooperation and favorable consideration of this offer.

Sincerely,

Signature of Project Sponsor's Authorized Representative

Title of Project Sponsor's Authorized Representative

c: LWCF Planner, Missouri Department of Natural Resources, Division of State Parks

Enclosure: Appraisal Report
Appraisal Review Report
Statement of Just Compensation

**WRITTEN STATEMENT OF JUST COMPENSATION
(SAMPLE)**

Description and Location of Property

(Name of Project Sponsor) proposes to purchase land and improvements on (Legal Description of Property) from owner at (Address of Landowner).

Purpose of Purchase

(Name of Project Sponsor) intends to use the parcel for construction of (Name of Project).

Improvements

(Provide a description of the physical setting and improvements, buildings, etc., on the property.)

Declaration of Offer

Based on an appraisal by a licensed appraiser and an appraisal review by a certified review appraiser, (Name of Project Sponsor) hereby makes an offer in the amount of \$ (Appraised Value) for the purchase of said property. This offer is for the fair market value of the property and does not include any considerations of decrease or increase in value attributable to the project for which it is being acquired. It reflects no relocation payments which the owner/tenant may be entitled to receive under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended.

Definition of Fair Market Value

“Fair Market Value is the highest price estimated in terms of money which the property would bring if exposed for sale in the open market, allowing a reasonable time in which to find a purchaser buying with knowledge of all the uses and purposes for which it is adapted and for which it is capable of being used.”

Appraisal Techniques

The following techniques were utilized to determine the fair market value of this property.

(List the techniques used by the appraiser to determine fair market value, such as Cost Approach, Sales Comparison Approach, and Value Estimate by the Income Capitalization Approach.)

Final Estimate of Value

(Provide an explanation of how the appraiser arrived at the final opinion of value and how the results of each approach were weighed in that opinion, and the reliability of each approach to this particular piece of property. The final estimate of value should be a single amount that reflects all contributing values of the property from improvements, etc.)

**WAIVER OF RIGHT TO JUST COMPENSATION
(SAMPLE)**

WAIVER OF ACQUISITION RIGHTS AND BENEFITS UNDER THE FINAL GOVERNMENT-WIDE RULE IMPLEMENTING THE UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970, AS AMENDED.

I, _____ have been informed of my rights to receive just compensation for the portion
(Owner's Name)
of my property which will be used by _____ to construct _____
(Govt. Agency or Organization) *(Project Name)*
in the _____
(Project Area)

I have received a copy of "Acquisition: Acquiring Real Property for Federal and Federal-Aid Programs and Projects" and "Relocation: Your Rights and Benefits as a Displaced Person under the Federal Relocation Assistance Program" and was contacted by a representative of _____ on _____
(Govt. Agency or Organization) *(Date)*
to outline my rights under the Uniform Act, including my right to have the property appraised at no cost to me; my right to accompany the appraiser during this process; and my right to receive Just Compensation based upon the appraisal or valuation process. I was also given the opportunity to discuss any concerns I might have regarding the information I have been provided. I have received a copy of the plat which identifies my property, and I understand which portion of my land I will be donating to the _____
(Govt. Agency or Organization)

I have determined that is in my best interest to waive all or a portion of my acquisition rights and benefits accruing to me under the Uniform Act and prefer to donate an easement or donate my land as described below.

Easement or Land Description _____
Or Partial Land Donation _____

Let it be known that by signature hereon, I freely and without duress waive any and all rights accruing to me for a purchase under the Uniform Act.

Signature of Owner(s):

Name of Owner(s):

Address of Owner(s):

Plat #: _____ Date: _____



LAND & WATER
CONSERVATION
FUND



**DIVISION OF
LABOR
STANDARDS**

MISSOURI DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

AFFIDAVIT

COMPLIANCE WITH THE PREVAILING WAGE LAW

I, _____, upon being duly sworn upon my oath state that: (1) I am the
(Name)

_____ of _____; (2) all requirements of
(Title) *(Name of Company)*

§§ 290.210 to 290.340, RSMo, pertaining to the payment of wages to workers employed on public works projects
have been fully satisfied with regard to this company's work on _____;
(Name of Project)

(3) I have reviewed and am familiar with the prevailing wage rules in 8 CSR 30-3.010 to 8 CSR 30-3.060; (4) based upon my knowledge of these rules, including the occupational titles set out in 8 CSR 30-3.060, I have completed full and accurate records clearly indicating (a) the names, occupations, and crafts of every worker employed by this company in connection with this project together with an accurate record of the number of hours worked by each worker and the actual wages paid for each class or type of work performed, (b) the payroll deductions that have been made for each worker, and (c) the amounts paid to provide fringe benefits, if any, for each worker; (5) the amounts paid to provide fringe benefits, if any, were irrevocably made to a fund, plan, or program on behalf of the workers; (6) these payroll records are kept and have been provided for inspection to the authorized representative of the contracting public body and will be available, as often as may be necessary, to such body and the Missouri Department of Labor and Industrial Relations; (7) such records shall not be destroyed or removed from the state for one year following the completion of this company's work on this project; and (8) there has been no exception to the full and complete compliance with the provisions and requirements of Annual Wage Order No. _____ Section _____ issued by the Missouri Division of Labor Standards and applicable to this project located in _____ County, Missouri, and completed on the _____ day of _____, _____.

The matters stated herein are true to the best of my information, knowledge, and belief. I acknowledge that the falsification of any information set out above may subject me to criminal prosecution pursuant to §§290.340, 570.090, 575.040, 575.050, or 575.060, RSMo.

Signature

Subscribed and sworn to me this _____ day of _____, _____.

My commission expires _____, _____.

Notary Public

Receipt by Authorized Public Representative

**CERTIFICATION OF
NON-SEGREGATED FACILITIES**

The federally assisted construction contractor certifies that he/she does not maintain or provide for his/her employees any segregated facilities at any of his/her establishments, and that he/she does not permit his/her employees to perform their services at any location, under his/her control, where segregated facilities are maintained. The federally assisted construction contractor certifies further that he/she will not maintain or provide for his/her employees any segregated facilities at any of his/her establishments, and that he/she will not permit his/her employees to perform their services at any location, under his/her control, where segregated facilities are maintained. The federally assisted construction contractor agrees that a breach of this section is a violation of the Equal Opportunity Clause in this contract. As used in this caption, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national of because of habit, local custom, or otherwise. The federally assisted construction contractor agrees that (except where he/she has obtained identical certifications from proposed subcontractors for specific time periods) he/she will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity Clause, and that he/she will retain such certifications in his/her files.

NOTE-. The penalty for making false statements in offers is prescribed in 18 U. S. C. 1001.

Contractor Signature _____

Typed Name & Title _____ Date _____

U.S. Department of the Interior

Certifications Regarding Debarment, Suspension and Other Responsibility Matters, Drug-Free Workplace Requirements and Lobbying

Persons signing this form should refer to the regulations referenced below for complete instructions:

Certification Regarding Debarment, Suspension, and Other Responsibility Matters - Primary Covered Transactions - **The prospective primary participant further agrees by submitting this proposal that it will include the clause titled, "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.** See below for language to be used or use this form certification and sign. (See Appendix A of Subpart D of 43 CFR Part 12.)

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions - (See Appendix B of Subpart D of 43 CFR Part 12.)

Certification Regarding Drug-Free Workplace Requirements - Alternate I. (Grantees Other Than Individuals) and Alternate II. (Grantees Who are Individuals) - (See Appendix C of Subpart D of 43 CFR Part 12)

Signature on this form provides for compliance with certification requirements under 43 CFR Parts 12 and 18. The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of the Interior determines to award the covered transaction, grant, cooperative agreement or loan.

PART A: Certification Regarding Debarment, Suspension, and Other Responsibility Matters- Primary Covered Transactions

CHECK ___ IF THIS CERTIFICATION IS FOR A PRIMARY COVERED TRANSACTION AND IS APPLICABLE.

- (1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:
 - (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;
 - (b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
 - (d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
- (2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

PART B: Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions

CHECK ___ IF THIS CERTIFICATION IS FOR A LOWER TIER COVERED TRANSACTION AND IS APPLICABLE.

- (1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

PART C: Certification Regarding Drug-Free Workplace Requirements

CHECK ___ IF THIS CERTIFICATION IS FOR AN APPLICANT WHO IS NOT AN INDIVIDUAL.

Alternate I. (Grantees Other Than Individuals)

A. The grantee certifies that it will or continue to provide a drug-free workplace by:

- (a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
- (b) Establishing an ongoing drug-free awareness program to inform employees about--
 - (1) The dangers of drug abuse in the workplace;
 - (2) The grantee's policy of maintaining a drug-free workplace;
 - (3) Any available drug counseling, rehabilitation, and employee assistance programs; and
 - (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
- (c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);
- (d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will --
 - (1) Abide by the terms of the statement; and
 - (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;
- (e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;
- (f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted --
 - (1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
 - (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;
- (g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a) (b), (c), (d), (e) and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

Check ___ if there are workplaces on files that are not identified here.

PART D: Certification Regarding Drug-Free Workplace Requirements

CHECK ___ IF THIS CERTIFICATION IS FOR AN APPLICANT WHO IS AN INDIVIDUAL.

Alternate II. (Grantees Who Are Individuals)

- (a) The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant;
- (b) If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, he or she will report the conviction, in writing, within 10 calendar days of the conviction, to the grant officer or other designee, unless the Federal agency designates a central point for the receipt of such notices. When notice is made to such a central point, it shall include the identification number(s) of each affected grant.

**PART E: Certification Regarding Lobbying
Certification for Contracts, Grants, Loans, and Cooperative Agreements**

*CHECK ___ IF CERTIFICATION IS FOR THE AWARD OF ANY OF THE FOLLOWING AND
THE AMOUNT EXCEEDS \$100,000: A FEDERAL GRANT OR COOPERATIVE AGREEMENT;
SUBCONTRACT, OR SUBGRANT UNDER THE GRANT OR COOPERATIVE AGREEMENT.*

*CHECK ___ IF CERTIFICATION FOR THE AWARD OF A FEDERAL
LOAN EXCEEDING THE AMOUNT OF \$150,000, OR A SUBGRANT OR
SUBCONTRACT EXCEEDING \$100,000, UNDER THE LOAN.*

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

As the authorized certifying official, I hereby certify that the above specified certifications are true.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL

TYPED NAME AND TITLE

DATE

EXHIBIT
BUSINESS ENTITY CERTIFICATION, ENROLLMENT DOCUMENTATION,
AND AFFIDAVIT OF WORK AUTHORIZATION

BUSINESS ENTITY CERTIFICATION:

The project sponsor must certify their current business status by completing either Box A or Box B or Box C on this Exhibit.

BOX A: To be completed by a non-business entity as defined below.

BOX B: To be completed by a business entity who has not yet completed and submitted documentation pertaining to the federal work authorization program as described at http://www.dhs.gov/files/programs/gc_1185221678150.shtm.

BOX C: To be completed by a business entity who has current work authorization documentation on file with a Missouri state agency including Division of Purchasing and Materials Management.

Business entity, as defined in section 285.525, RSMo, pertaining to section 285.530, RSMo, is any person or group of persons performing or engaging in any activity, enterprise, profession, or occupation for gain, benefit, advantage, or livelihood. The term “**business entity**” shall include but not be limited to self-employed individuals, partnerships, corporations, contractors, and subcontractors. The term “**business entity**” shall include any business entity that possesses a business permit, license, or tax certificate issued by the state, any business entity that is exempt by law from obtaining such a business permit, and any business entity that is operating unlawfully without such a business permit. The term “**business entity**” shall not include a self-employed individual with no employees or entities utilizing the services of direct sellers as defined in subdivision (17) of subsection 12 of section 288.034, RSMo.

Note: Regarding governmental entities, business entity includes Missouri schools, Missouri universities (other than stated in Box C), out of state agencies, out of state schools, out of state universities, and political subdivisions. A business entity does not include Missouri state agencies and federal government entities.

BOX A – CURRENTLY NOT A BUSINESS ENTITY

I certify that _____ (**Company/Individual Name**) **DOES NOT CURRENTLY MEET** the definition of a business entity, as defined in section 285.525, RSMo pertaining to section 285.530, RSMo as stated above, because: (check the applicable business status that applies below)

- I am a self-employed individual with no employees; **OR**
- The company that I represent employs the services of direct sellers as defined in subdivision (17) of subsection 12 of section 288.034, RSMo.

I certify that I am not an alien unlawfully present in the United States and if _____ (**Company/Individual Name**) is awarded a Land and Water Conservation Fund Grant for _____ (**Project Title**) and if the business status changes during the project period to become a business entity as defined in section 285.525, RSMo, pertaining to section 285.530, RSMo, then, prior to proceeding with the project as a business entity, _____ (Company/Individual Name) agrees to complete Box B, comply with the requirements stated in Box B and provide the Department of Natural Resources, Division of State Parks with all documentation required in Box B of this exhibit.

Authorized Representative’s Name (Please Print)

Authorized Representative’s Signature

Company Name (if applicable)

Date

EXHIBIT 1, continued

(Complete the following if you DO NOT have the E-Verify documentation and a current Affidavit of Work Authorization already on file with the State of Missouri. If completing Box B, do not complete Box C.)

BOX B – CURRENT BUSINESS ENTITY STATUS

I certify that _____ (**Business Entity Name**) **MEETS** the definition of a business entity as defined in section 285.525, RSMo, pertaining to section 285.530.

Authorized Business Entity Representative's
Name (Please Print)

Authorized Business Entity
Representative's Signature

Business Entity Name

Date

E-Mail Address

As a business entity, the project sponsor must perform/provide each of the following. The project sponsor should check each to verify completion/submission of all of the following:

- Enroll and participate in the E-Verify federal work authorization program (Website: http://www.dhs.gov/files/programs/gc_1185221678150.shtm; Phone: 888-464-4218; Email: e-verify@dhs.gov) with respect to the employees hired after enrollment in the program who are proposed to work in connection with the services required herein; AND
- Provide documentation affirming said company's/individual's enrollment and participation in the E-Verify federal work authorization program. Documentation shall include EITHER the E-Verify Employment Eligibility Verification page listing the project sponsor's name and company ID OR a page from the E-Verify Memorandum of Understanding (MOU) listing the project sponsor's name and the MOU signature page completed and signed, at minimum, by the project sponsor and the Department of Homeland Security – Verification Division. If the signature page of the MOU lists the project sponsor's name and company ID, then no additional pages of the MOU must be submitted; AND
- Submit a completed, notarized Affidavit of Work Authorization provided on the next page of this Exhibit.

EXHIBIT 1, continued

(Complete the following if you have the E-Verify documentation and a current Affidavit of Work Authorization already on file with the State of Missouri. If completing Box C, do not complete Box B.)

BOX C – AFFIDAVIT ON FILE - CURRENT BUSINESS ENTITY STATUS

I certify that _____ (**Business Entity Name**) **MEETS** the definition of a business entity as defined in section 285.525, RSMo, pertaining to section 285.530, RSMo, and have enrolled and currently participates in the E-Verify federal work authorization program with respect to the employees hired after enrollment in the program who are proposed to work in connection with the Land and Water Conservation Fund project with the State of Missouri. We have previously provided documentation to a Missouri state agency or public university that affirms enrollment and participation in the E-Verify federal work authorization program. The documentation that was previously provided included the following.

- ✓ The E-Verify Employment Eligibility Verification page OR a page from the E-Verify Memorandum of Understanding (MOU) listing the project sponsor’s name and the MOU signature page completed and signed by the project sponsor’s and the Department of Homeland Security – Verification Division
- ✓ A current, notarized Affidavit of Work Authorization (must be completed, signed, and notarized within the past twelve months).

Name of **Missouri State Agency** or **Public University*** to Which Previous E-Verify Documentation Submitted:

(*Public University includes the following five schools under chapter 34, RSMo: Harris-Stowe State University – St. Louis; Missouri Southern State University – Joplin; Missouri Western State University – St. Joseph; Northwest Missouri State University – Maryville; Southeast Missouri State University – Cape Girardeau.)

Date of Previous E-Verify Documentation Submission: _____

Previous **Bid/Contract Number** for Which Previous E-Verify Documentation Submitted: _____
(if known)

Authorized Business Entity Representative’s
Name (Please Print)

Authorized Business Entity
Representative’s Signature

E-Verify MOU Company ID Number

E-Mail Address

Business Entity Name

Date

FOR STATE USE ONLY

Documentation Verification Completed By:

Buyer

Date

Build America, Buy America Language for Bid Packets and Advertisements

Contracting for Engineering and Design Related Services Bid Packets

1) Add to the RFQ and Contracts - This agreement is for services related to a project that is subject to the Build America, Buy America Act (BABAA) requirements under Title IX of the Infrastructure Investment and Jobs Act (“IIJA”), Pub. L. 177-58. Absent an approved waiver, all iron, steel, manufactured products, and construction materials used in this project must be produced in the United States, as further outlined by the Office of Management and Budget’s Memorandum M-22-11, Initial Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure, April 18, 2022.

2) Add to Description of Services for Construction, manager, designers and 3rd – Party inspection services:

- Opinions of total project costs and revisions thereof should reflect compliance with BABAA requirements.
- Determine and certify that to the best of Provider’s knowledge and belief all iron and steel products, manufactured products, and construction materials referenced in any technical analysis/report; the plans, specifications, and bidding documents; any bid addenda; and change orders comply with all federal requirements, including BABAA.
- Review and approve or take action with respect to confirmation of BABAA compliance, shop drawings, samples, and other required Contractor submittals, including applications for payment.
- Review and document delivered products and materials including substitutes and “or equals” for conformity with contract conditions, [insert name of Agency] regulations, and BABAA requirements.
- Obtain, review and confirm manufacturers’ and contractors’ certifications on compliance with BABAA requirements and maintain copies of certifications in project files. Any issues of concerns related to compliance with BABAA should be immediately brought to the attention of the Applicant and Agency

Contracting for Materials or Services Bid Packets and Advertisement

1) Add to Bid Packet Advertisement - This agreement is for services related to a project that is subject to the Build America, Buy America Act (BABAA) requirements under Title IX of the Infrastructure Investment and Jobs Act (“IIJA”), Pub. L. 177-58. Absent an approved waiver, all iron, steel, manufactured products, and construction materials used in this project must be produced in the United States, as further outlined by the Office of Management and Budget’s Memorandum M-22-11, Initial Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure, April 18, 2022.

2) Add to Instructions to Bidders - Any request for substitute or “or equal” shall include a Manufacturer’s Certification of compliance with the Build America, Buy America Act (BABAA) requirements mandated by Title IX of the Infrastructure Investment and Jobs Act (“IIJA”), Pub. L. 177-58.

- a. If the Instructions include a Federal requirements section, include the following: BABAA requirements apply to this project.

3) Add to Bid Form – Bidder’s Representation Section - Bidder is familiar with all laws and regulations that may affect cost, progress, and performance of the work, including BABAA requirements.

4) Add to General or Supplemental Conditions – Definitions Section

- a. Build America, Buy America Act (BABAA) – Requirements instituted by the Bipartisan Infrastructure Law of 2021 mandating domestic preference that all iron and steel, manufactured products, and construction materials are produced in the United States.
- b. Construction Materials – Those articles, materials, or supply – other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives – that are or consist primarily of: nonferrous metals, plastic and polymer-based products, glass, lumber, or drywall.
- c. Manufactured Product – Items assembled out of components, or otherwise made or processed from raw materials into finished products. Manufactured products must be manufactured (assembled) in the United States, and the cost of components that were mined, produced, or manufactured in the United States must be greater than 55 percent of the total cost of all components of the project.
- d. Manufacturer’s Certification – Documentation provided by a Manufacturer, certifying that the items provided by Manufacturer meet the domestic preference requirements of BABAA

5) Add to Contractor’s Responsibilities Section

- a. All products must meet BABAA requirements.
- b. Contractor shall include Manufacturer’s Certification for BABAA requirements with all applicable submittals. If a specific manufacture is used in the bidding, a statement that each applicable Manufacturer will comply with BABAA, must be included with the bid submission. Contractor shall comply with BABAA requirements, including coordination with manufacturers, distributors, and suppliers to correct deficiencies in any BABAA requirement and documentation.
- c. Engineer/Architect approval of shop drawings or samples shall include review of BABAA documentation.
- d. Contractor shall certify upon completion that all work and materials have complied with BABAA requirements.
- e. For any change orders, Contractor shall provide BABAA compliant documentation for any new products or materials required by the change.
- f. Installation of materials or products that are not compliant with BABAA requirements shall be considered defective work. An approved Manufacturer’s Certification or waiver prior to items being delivered to the project site is required.
- g. By submitting an application for payment, based in whole or in part on furnishing equipment or materials, Contractor certifies that such equipment and materials, to contractor’s knowledge, are compliant with BABAA requirements.

6) Add to Federal Requirement Section - Domestic Preference: Iron and steel products, Manufactured Products, and Construction Materials used in this project comply with the Build America, Buy America Act (BABAA) requirements mandated by Title IX of the Infrastructure Investment and Jobs Act (“IIJA”), Pub. L. 177-58.

Build America, Buy America Certification

Project Number: _____

Project Title: _____

As required by Section 70914 of the Bipartisan Infrastructure Law (also known as the Infrastructure Investment and Jobs Act), P.L. 117-58, on or after May 14, 2022, none of the funds under a federal award that are part of Federal financial assistance program for infrastructure (see definition below) may be obligated for a project (see definition below) unless all of the iron, steel, manufactured products, and construction materials (see definition below) used in the project are produced in the United States, unless subject to an approved waiver. The requirements of this section must be included in all subawards, including all contracts and purchase orders for work or products under this program.

Recipients of an award of Federal financial assistance are hereby notified that none of the funds provided under this award may be used for a project for infrastructure unless:

1. all iron and steel used in the project are produced in the United States--this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;
2. all manufactured products used in the project are produced in the United States —this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and
3. all construction materials are manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States.

The Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment that are used at or within the finished infrastructure project, but are not an integral part of the structure or permanently affixed to the infrastructure project.

For further information on the Buy America preference, please visit www.doi.gov/grants/BuyAmerica. Additional information can also be found at the White House Made in America Office website: www.whitehouse.gov/omb/management/made-in-america/.

Definitions

“Infrastructure” includes, at a minimum, the structures, facilities, and equipment for, in the United States, roads, highways, and bridges; public transportation; dams, ports, harbors, and other maritime

facilities; intercity passenger and freight railroads; freight and intermodal facilities; airports; water systems, including drinking water and wastewater systems; electrical transmission facilities and systems; utilities; broadband infrastructure; and buildings and real property. Infrastructure includes facilities that generate, transport, and distribute energy.

“Construction materials” includes an article, material, or supply that is or consists primarily of:

- non-ferrous metals;
- plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
- glass (including optic glass);
- lumber; or
- drywall.

“Construction Materials” does not include cement and cementitious materials, aggregates such as stone, sand, or gravel, or aggregate binding agents or additives.

“Domestic content procurement preference” means all iron and steel used in the project are produced in the United States; the manufactured products used in the project are produced in the United States; or the construction materials used in the project are produced in the United States.

“Project” means the construction, alteration, maintenance, or repair of infrastructure in the United States

Build America, Buy America Waiver Requests:

When necessary, recipients may apply for, and the Department of the Interior (DOI) may grant, a waiver from these requirements, subject to review by the Made in America Office. The DOI may waive the application of the domestic content procurement preference (see definition above) in any case in which it is determined that one of the below circumstances applies:

1. Non-availability Waiver: the types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality;
2. Unreasonable Cost Waiver: the inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent; or
3. Public Interest Waiver: applying the domestic content procurement preference would be inconsistent with the public interest.

There may be instances where an award qualifies, in whole or in part, for an existing DOI general applicability waiver as described at: www.doi.gov/grants/BuyAmerica/GeneralApplicabilityWaivers.

If the specific financial assistance agreement, infrastructure project, or non-domestic materials meets the criteria of an existing general applicability waiver within the limitations defined within the waiver, the recipient is not required to request a separate waiver for non-domestic materials.

If a general applicability waiver does not already apply, and a recipient believes that one of the above circumstances applies to an award, a request to waive the application of the domestic content procurement preference may be submitted to the financial assistance awarding officer in writing. Waiver requests shall include the below information. The waiver shall not include any Privacy Act information, sensitive data, or proprietary information within their waiver request. Waiver requests will be posted to www.doi.gov/grants/buyamerica and are subject to public comment periods of no less than 15 days. Waiver requests will also be reviewed by the Made in America Office.

1. Type of waiver requested (non-availability, unreasonable cost, or public interest).
2. Requesting entity and Unique Entity Identifier (UEI) submitting the request.
3. Department of Interior Bureau or Office who issued the award.
4. Federal financial assistance listing name and number (reference block 2 on DOI Notice of Award)
5. Financial assistance title of project (reference block 8 on DOI Notice of Award).
6. Federal Award Identification Number (FAIN).
7. Federal funding amount (reference block 11.m. on DO Notice of Award).
8. Total cost of Infrastructure expenditures (includes federal and non-federal funds to the extent known).
9. Infrastructure project description(s) and location(s) (to the extent known).
10. List of iron or steel item(s), manufactured goods, and construction material(s) the recipient seeks to waive from Buy America requirements. Include the name, cost, countries of origin (if known), and relevant PSC or NAICS code for each.
11. A certification that the recipient made a good faith effort to solicit bids for domestic products supported by terms included in requests for proposals, contracts, and nonproprietary communications with the prime contractor.
12. A statement of waiver justification, including a description of efforts made (e.g., market research, industry outreach) by the recipient, in an attempt to avoid the need for a waiver. Such a justification may cite, if applicable, the absence of any Buy America-compliant bids received in response to a solicitation.
13. Anticipated impact if no waiver is issued. Approved waivers will be posted at www.doi.gov/grants/BuyAmerica/ApprovedWaivers; recipients requesting a waiver will be notified of their waiver request determination by an awarding officer.

The undersigned Proposer hereby certifies on behalf of itself and all contractors (at all tiers) that it will meet Build America, Buy America requirements in Section 70914 of the Bipartisan Infrastructure Law P.L. 117-58, using one of the following provisions:

_____ The infrastructure project/product contains no steel or iron products, manufactured products or construction materials manufactured outside the United States per Section 70914 of the Bipartisan Infrastructure Law, P.L. 117-58. If there is ANY foreign steel or iron, manufactured products or construction materials in your infrastructure project/product you may not check this box.

_____ The project/product has foreign steel or iron, manufactured products, or construction materials; a **Build America, Buy America** waiver is required. The Contracting Entity may, but is not obligated to, seek a waiver of Build America, Buy America requirements if grounds for the waiver exist. However, Proposer certifies that it will comply with the applicable Build America, Buy America requirements if a waiver of those requirements is not available or not pursued by the Contracting Entity. The waiver process can take time and the project may not move forward until a waiver is completed.

A false certification is a criminal act in violation of 18 USC 1001. Should this Agreement be investigated, Proposer has the burden of proof to establish that it is in compliance.

Proposer: _____

Signature of Authorized Official: _____

Name of Authorized Official: _____

Title: _____

Date: _____

CERTIFICATE OF MATERIALS ORIGIN

PROJECT NUMBER		CONTRACT ID	
ITEM DESCRIPTION		BID ITEM NUMBER	
INVOICE NUMBER		QUANTITY	
DATE RECEIVED		BILL OF LADING No.	

MATERIAL SOURCE (NAME AND ADDRESS) TO INCLUDE EACH SUPPLIER, FABRICATOR, AND MANUFACTURER INCLUDING HEAT/BATCH NUMBERS IF AVAILABLE

MATERIAL DESCRIPTION

DESCRIPTION OF MATERIALS OF UNKNOWN ORIGIN OR FOREIGN MATERIALS DELIVERED TO THE PROJECT

This certification is made for the purpose of establishing the materials acceptance under the Build America, Buy America Certification (Bipartisan Infrastructure Law P.L 117-58 Section 70914). All iron and steel, manufactured products, and construction materials, including protective coating for the domestic materials described above occurred in the United States of America. Manufacturer's certificates verify the origin above described in the domestic materials and will be kept on file for three years by the suppliers following final payment. Copies will be provided to the National Park Service upon request.

I declare under penalty of perjury under the Missouri and Federal Laws that the foregoing is true and correct.

Company Name and Address	Authorized Representative
	<p>Name:</p> <p>Title:</p> <p>Signature:</p> <p>Date:</p>



MISSOURI DEPARTMENT OF NATURAL RESOURCES

FINANCIAL ASSISTANCE AGREEMENT

Assistance as described herein is hereby offered and accepted effective upon signature of authorized officials for the dates indicated in Budget Period and Project Period below.

RECIPIENT INFORMATION			
RECIPIENT NAME		RECIPIENT TELEPHONE NUMBER WITH AREA CODE	
ADDRESS		CITY	STATE ZIP CODE
UNIQUE ENTITY ID	AWARD NUMBER	BUDGET PERIOD	PROJECT PERIOD
RECIPIENT PROJECT MANAGER NAME		RECIPIENT PROJECT EMAIL ADDRESS	PROJECT MANAGER TELEPHONE NUMBER WITH AREA CODE

PROJECT INFORMATION			
RECIPIENT PROJECT TITLE AND PROJECT DESCRIPTION (ATTACH ADDITIONAL PAGES AS NECESSARY)			

TYPE OF ASSISTANCE New Award <input type="checkbox"/> Amendment <input type="checkbox"/>	SOURCE OF FUNDING Federal <input type="checkbox"/> State <input type="checkbox"/> Other <input type="checkbox"/>	CFDA NUMBER	CFDA NAME
STATE PROJECT MANAGER NAME		STATE PROJECT MANAGER TELEPHONE NUMBER WITH AREA CODE	INDIRECT COST RATE FOR RECIPIENT

RESEARCH AND DEVELOPMENT YES <input type="checkbox"/> NO <input type="checkbox"/>	RESEARCH AND DEVELOPMENT COMMENTS IF NEEDED
--	---

PROJECT FUNDING	Original Amount	Original Percentage	Amended Amount	Amended Percentage	Total Amount	Total Percentage
Federal Award:	\$	0.00 %	\$	0.00 %	\$ 0.00	0.00 %
State/Other Award:	\$	0.00 %	\$	0.00 %	\$ 0.00	0.00 %
Recipient Match:	\$	0.00 %	\$	0.00 %	\$ 0.00	0.00 %
Total Award:	\$ 0.00	0.00 %	\$ 0.00	0.00 %	\$ 0.00	0.00 %

AGREEMENT ADMINISTRATION

THE ATTACHMENTS IDENTIFIED BELOW ARE INCORPORATED BY REFERENCE AS THOUGH FULLY RESTATED HEREIN. THE RECIPIENT AGREES TO ADMINISTER THIS AGREEMENT IN ACCORDANCE WITH ALL APPLICABLE FEDERAL AND STATE LAWS AND REGULATIONS INCLUDING, BUT NOT LIMITED TO:

APPLICABLE PROGRAM GUIDELINES		APPLICATION NUMBER	RECIPIENT APPLICATION, AS NEGOTIATED, DATED		
BUDGET PLAN Attachment #	DETAILED SCOPE OF WORK Attachment #	SPECIAL CONDITIONS Attachment #	GENERAL TERMS AND CONDITIONS Attachment #	SUSPENSION/DEBARMENT Attachment #	PUBLIC LAW Attachment #
PUBLICATIONS Attachment #	EPA MBE/WBE UTILIZATION Attachment # _____	CERTIFICATE REGARDING LOBBYING Attachment #	INVOICE Attachment #	ADDITIONAL ATTACHMENTS Attachment # Attachment #	

AMENDMENT INFORMATION

AMENDMENT ID	AMENDMENT DESCRIPTION (ATTACH ADDITIONAL PAGES AS NECESSARY)
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FEDERAL AWARD INFORMATION ([ATTACH ADDITIONAL PAGES AS NECESSARY](#))

FEDERAL AWARD PROJECT TITLE AND DESCRIPTION			
FEDERAL AWARING AGENCY		FEDERAL AWARD ID NUMBER	PASS THROUGH ENTITY NAME MoDNR,

FEDERAL FUNDING YEAR	FEDERAL AWARD DATE	TOTAL AMOUNT OF FEDERAL AWARD \$	INDIRECT COST RATE FOR MoDNR %
----------------------	--------------------	-------------------------------------	-----------------------------------

HAVE YOU OR AN IMMEDIATE FAMILY MEMBER EVER SERVED IN THE U.S. ARMED FORCES? YES <input type="checkbox"/> NO <input type="checkbox"/>

*This question is optional.

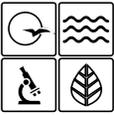
IF YES, WOULD YOU LIKE INFORMATION ABOUT MILITARY-RELATED SERVICES IN MISSOURI? YES <input type="checkbox"/> NO <input type="checkbox"/>
--

*This question is optional.

APPROVAL

I am at least 18 years old, and certify I am duly authorized to accept this award for recipient using electronic signature. The recipient understands and agrees it is a condition precedent to receive reimbursement that recipient comply with and is not in breach or default of all terms and conditions of this award stated above and attached hereto, and that no request for reimbursement will be processed unless it is presented in proper form.

RECIPIENT ORGANIZATION AUTHORIZED OFFICIAL NAME AND TITLE (TYPED)	SIGNATURE	DATE
DEPARTMENT OF NATURAL RESOURCES DIRECTOR OR DESIGNEE NAME (TYPED)	SIGNATURE	DATE



MISSOURI DEPARTMENT OF NATURAL RESOURCES
 DIVISION OF STATE PARKS
LAND AND WATER CONSERVATION FUND CFDA 15.916
QUARTERLY REPORT FORM

Please attach completed Quarterly Report Form and email to: msspgrants@dnr.mo.gov

PROJECT SPONSOR

NAME		PROJECT NUMBER	
PROJECT TITLE			CONSTRUCTION START DATE
QUARTERLY PERIOD YEAR	<input type="checkbox"/> JAN. - MARCH DUE APRIL 30 TH	<input type="checkbox"/> APRIL - JUNE DUE JULY 31 ST	<input type="checkbox"/> JULY - SEPT. DUE OCT. 31 ST
		<input type="checkbox"/> OCT. - DEC. DUE JAN. 31 ST	FOR FISCAL YEAR

PROJECT SCOPE

PROGRESS: (State project scope elements begun and/or completed.)

STATUS: (Explain what remains to be done.)

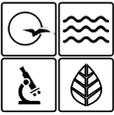
PERCENTAGE COMPLETE	EXPECTED COMPLETION DATE
---------------------	--------------------------

COMMENTS

SIGNATURE OF RESPONSIBLE OFFICIAL	DATE REPORT COMPLETED
-----------------------------------	-----------------------

TITLE

EMAIL ADDRESS	TELEPHONE NUMBER
---------------	------------------



MISSOURI DEPARTMENT OF NATURAL RESOURCES
 DIVISION OF STATE PARKS
**LAND AND WATER CONSERVATION FUND CFDA 15.916
 ANNUAL REPORT FORM**

Please attach completed Quarterly Report Form and email to: mspgrants@dnr.mo.gov

PROJECT SPONSOR

NAME		PROJECT NUMBER	
PROJECT TITLE			CONSTRUCTION START DATE
PARK NAME			GRANT YEAR
STATUS	<input type="checkbox"/> AHEAD OF SCHEDULE	<input type="checkbox"/> BEHIND SCHEDULE	<input type="checkbox"/> ON SCHEDULE

ISSUES (EXPLAIN)

PROGRESS: (State project scope elements begun and/or completed.)

GOALS: (Explain what remains to be done and include dates when they should be completed.)

DO YOU THINK YOU WILL NEED TO AMEND YOUR SCOPE OF WORK? YES NO

DO YOU THINK YOU WILL NEED TO REQUEST A TIME EXTENSION? YES NO

PERCENTAGE COMPLETE	EXPECTED COMPLETION DATE
---------------------	--------------------------

COMMENTS

NAME OF RESPONSIBLE OFFICIAL	DATE REPORT COMPLETED
------------------------------	-----------------------

TITLE

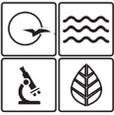
EMAIL ADDRESS	TELEPHONE NUMBER
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GMS USE ONLY

PERIOD OF PERFORMANCE	FBMS NUMBER
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GMS REVIEWER	DAS REVIEWER
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<p>Have you ever served on active duty in the Armed Forces of the United States and separated from such service under conditions other than dishonorable? <input type="checkbox"/> YES <input type="checkbox"/> NO</p> <p>Would you like to receive information and assistance regarding veteran benefits and services? <input type="checkbox"/> YES <input type="checkbox"/> NO</p>	<p>May the agency share your contact information with the Missouri Veterans Commission to provide with information regarding available veterans benefits and services? <input type="checkbox"/> YES <input type="checkbox"/> NO</p> <p>General information may also be found on the Missouri Veterans Commission's website: https://veteranbenefits.mo.gov/events/</p>
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MISSOURI DEPARTMENT OF NATURAL RESOURCES
 DIVISION OF STATE PARKS
LAND AND WATER CONSERVATION FUND CFDA 15.916
REIMBURSEMENT STATEMENT

PROJECT NUMBER	BILLING NUMBER
BILLING STATUS	<input type="checkbox"/> FINAL <input type="checkbox"/> PARTIAL

PROJECT SPONSOR

NAME		TELEPHONE NUMBER	
ADDRESS AS SHOWN ON FEDERAL TAX RETURN	CITY	STATE	ZIP
FEDERAL ID NUMBER			
PROJECT TITLE			
THIS BILLING INCLUDES COSTS INCURRED FROM		DATE	TO DATE
TOTAL COSTS THIS BILLING (Should match total from Reimbursement Log)		AMOUNT REQUESTED FOR REIMBURSEMENT	

I certify that this billing is correct and is based upon actual payments of record; that payment from the state government has not been received; that work and services are in accordance with the approved project agreement including amendments thereto; appropriate procurement procedures were followed; and that progress of the work and services under the project agreement is satisfactory and is consistent with the amount billed.

NAME OF RESPONSIBLE OFFICIAL (Type or Print)	
SIGNATURE OF RESPONSIBLE OFFICIAL	
TITLE	DATE

THIS REQUEST MUST INCLUDE A COPY OF THE REIMBURSEMENT LOG AND THE NECESSARY SUPPORTING DOCUMENTATION (e.g., COPIES OF INVOICES AND CHECKS, SIGNED EMPLOYEE TIMESHEETS, VOLUNTEER TIMESHEETS, ETC.).

COMMENTS FOR REVIEWER

APPENDIX G. PROJECT CLOSEOUT FORMS AND CHECKLISTS

The following items are required documents to submit when closing out your project and submitting your final reimbursement request. Please submit **one copy** of each item to the Grants Management Section (GMS), at the email below. Use this checklist to ensure that you've included all required documentation in the Project Closeout Packet.

LWCF Planner

mspgrants@dnr.mo.gov

- Reimbursement Statement Form**; under "Billing Status," check the box marked "Final."
- Reimbursement Log Form**, including all required cost documentation.
- Individual and Volunteer Time Record Form**
- Equipment Use Record**, as appropriate.
- Final Inspection Request Form**
- LWCF Boundary Map**, providing all information on the LWCF Boundary Map Checklist.
- As-Built Floor Plans**, identifying all accessible facilities.
- OPDMD Assessment and Written Policy**, as appropriate.
- Post-Construction Certification Form**
- Control and Tenure Documentation**, if not already submitted.
- Proof of Flood Insurance**, if required.
- Recorded Copy of Declaration of Deed**



MISSOURI DEPARTMENT OF NATURAL RESOURCES
 DIVISION OF STATE PARKS
LAND AND WATER CONSERVATION FUND CFDA 15.916
FINAL INSPECTION REQUEST

PLEASE EMAIL REQUESTS TO mspgrants@dnr.mo.gov

PROJECT SPONSOR

NAME		PROJECT NUMBER
PROJECT TITLE		
PROJECT SCOPE		
PROJECT PERIOD	DATE TO DATE	DATE THAT PROJECT WAS COMPLETED

PROJECT MANAGER FOR PROJECT

NAME	CONTACT TELEPHONE NUMBER
	OFFICE CELL
CONTACT EMAIL	

WHERE WILL STAFF MEET SPONSOR?

OFFICE PROJECT LOCATION

ADDRESS OF MEETING LOCATION

ADDRESS	CITY	STATE	ZIP
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NOTES

GIVE THE DATE OF RIBBON CUTTING CEREMONY OR PROVIDE 2 DATES THAT THE PROJECT MANAGER COULD ACCOMMODATE A GMS MEMBER FOR THE FINAL INSPECTION/WALK THROUGH

DATE AND TIME OF RIBBON CUTTING CEREMONY
DATE AND TIME AVAILABLE
DATE AND TIME AVAILABLE

Upon receiving this request, a GMS staff member will call you to confirm a final inspection meeting.

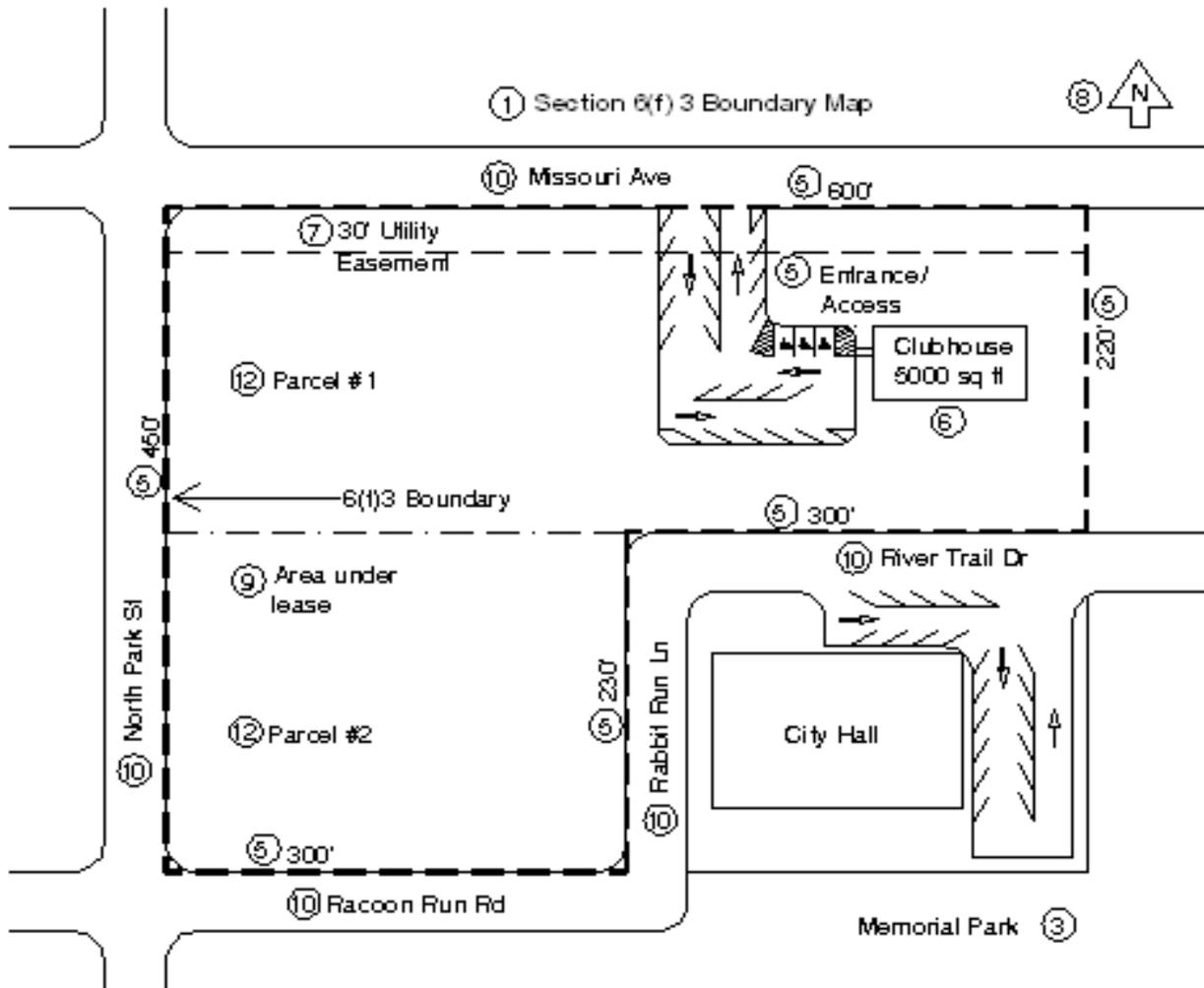
<p>Have you ever served on active duty in the Armed Forces of the United States and separated from such service under conditions other than dishonorable? <input type="checkbox"/> YES <input type="checkbox"/> NO</p> <p>Would you like to receive information and assistance regarding veteran benefits and services? <input type="checkbox"/> YES <input type="checkbox"/> NO</p>	<p>May the agency share your contact information with the Missouri Veterans Commission to provide with information regarding available veterans benefits and services? <input type="checkbox"/> YES <input type="checkbox"/> NO</p> <p>General information may also be found on the Missouri Veterans Commission's website: https://veteranbenefits.mo.gov/events/</p>
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LWCF Boundary Map Checklist

Maps should be no bigger than 11" x 17". Maps may be drawn on a satellite or aerial image. **Full-color images are preferred.** The map must include the following information. For your convenience, a sample map has been provided on the following page. Maps that do not include all of the required information will be returned to the project sponsor for necessary revision.

- Entitle the map, "LWCF Boundary Map."
- Signature and date on the map by the project sponsor's authorized signatory.
- Official name of the Park and Site and the title of the Project.
- Date of map preparation.
- Clearly indicate dimensions of the park area with measurements in feet on each side to effectively illustrate the area that will be under the LWCF Act protection.
- Indicate entrance/access point(s) to project area and to park or site, if project is part of a larger area.
- If applicable, identify any pre-existing uses (buildings/non-outdoor recreation facilities) that do not support outdoor recreation and that should be excluded from the LWCF Act protection. Include the square footage of the non-supporting facility or area footprint. Subtract this square footage from the total square feet of the area to be protected under the LWCF Act.
- If applicable, indicate any outstanding rights and interest in the area, including easements, deed/lease restrictions, reversionary interests, rights-of-way, etc.
- If applicable, include any area or resource upon which the project is dependent, even if the area/resource was not included in the project scope or funded by LWCF. An example of this would be an existing parking lot that provides the sole access to a picnic area that was developed with a LWCF grant. The parking lot would need to be included in the LWCF boundary, and its footprint added to the total square footage.
- Include a north arrow.
- If applicable, indicate any areas under lease with term of at least 25 years remaining on the lease.
- Indicate adjacent street names, bodies of water and any other features that could be used as identifying landmarks.
- Convert the total square footage to acreage and indicate total acreage within the LWCF boundary.
- Indicate assessor's parcel number(s).
- Provide the latitude and longitude of the project entrance. Use decimal degrees
- For projects within an already established LWCF area, indicate the location of the development/renovation project in relation to existing facilities.

Sample LWCF Boundary Map



 Signature of individual
 Authorized in resolution
 (2)

 Date of map preparation
 (4)

 Date

 Section 6(f)3 Boundary Acreage
 (11)

 Latitude/Longitude
 (13)

POST CONSTRUCTION CERTIFICATE

This certificate must be submitted with the final billing. The form must be signed by the project sponsor and by the architect or engineer who supervised the construction. If the project did not involve a contract architect or engineer, the project sponsor's architect, engineer or project manager should inspect the project and sign the form.

As-Built Plans

One copy of as-built site plans must be submitted to the Grants Management Section, with a copy retained in the project sponsor's file. If deviations in design were not made to plans previously submitted the Grants Management Section, a set of the original as-built plans with a revised date is sufficient. As-built plans must include:

- a) Elevations and floor plans of structures, indicating ADA-compliance.
- b) A stamp by a certified architect or engineer, if the project involved either.

POST CONSTRUCTION CERTIFICATION:

I hereby certify that construction of LWCF Project Number _____ has been completed in accordance with the original and revised plans and specifications on file with the Grants Management Section. The plans and specifications are consistent with the scope of the project approved by the National Park Service and the Grants Management Section, on behalf of the Missouri Department of Natural Resources. The project has been constructed in accord with all applicable federal, state and local building rules and regulations and is acceptable for public use.

A RESPONSIBLE OFFICIAL FROM THE SPONSORING ORGANIZATION MUST SIGN AND DATE THE CERTIFICATION

Signature of Project Sponsor

DATE _____

Signature of Project Architect/Engineer

DATE _____

Certification Number of Stamp (if applicable) _____

The following is a SAMPLE Declaration, which may be used as guide to develop a document for recording in accordance with LWCF program requirements and RSMo 59.310. Missouri law for miscellaneous documents requires the document to be dated, signed, and notarized, and for the property description including deed book and page number to appear on the first page, or to use a cover page with this information in accordance with the statutory requirements. In addition, each county may have additional requirements for recording real estate documents.

[3-inch margin reserved for recording; additional fee if margin not reserved]

WHEN RECORDED MAIL TO:

[insert owner contact information; owner is responsible to provide an additional copy to Grant Administrator]

Space above line reserved for recorder's use

DECLARATION OF DEED RESTRICTION

THIS DECLARATION made this ___ day of ____, 20XX, _____ by [insert legal name of property owner], [mailing address] (hereinafter referred to as "Owner" ; *this is the grantor, if required by recorder's office*). Owner hereby declares that the below-described real property is and shall be held transferred, sold, and conveyed subject to the following conditions and restrictions in accordance with the covenants made for the award of grant funds in Project XXXX administered by the Missouri Department of Natural Resources ("Department"; *this is grantee and holder, if required by the recorder's office*), P.O. Box 176, Jefferson City, MO 65102, through funds made available by the United States Department of Interior, National Park Service, Land and Water Conservation Fund (LWCF):

[insert legal description of 6(f) boundary, must begin on page 1 of document]

In accordance with the LWCF grant award and 2 CFR 200.316, the Property has been improved with grant funds and must be held in trust as trustees for the beneficiaries of the program funds used to develop the Property by limiting use of the Property to outdoor recreational use, and maintaining and operating the Property consistent with 43 CFR Part 17 (civil rights laws), in perpetuity. This Declaration shall be binding upon Owner and Owner's heirs, successors, assigns and other transferees in interest (hereinafter "Transferees"), and shall run with the land. Each instrument hereafter conveying any interest in the Property or any portion of the Property, shall contain a notice of this Declaration. Owner, on its behalf and on behalf of all Transferees, grants to the Department's representatives the right of access at reasonable times in a reasonable manner for the purpose of inspection to determine compliance with these limitations.

