2021 Land & Water Conservation Fund Project Administration Guide

Missouri State Parks
Grants Management Section
PO Box 176
Jefferson City, MO 65102-0176
573-751-8661
MSPGRANTS@DNR.MO.GOV

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
CAA	Clean Air Act
CFR	Code of Federal Regulations
CWA	Clean Water Act
DNR	Department of Natural Resources
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
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 2021 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 off-shore 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 (DNR) 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 Project Agreement is signed to complete their LWCF project (the first page is labeled "financial assistance agreement" and incorporates by reference other documents that are the terms and conditions that must be followed to receive reimbursement). Additionally, physical work (such as ground clearing or the beginning of construction) **must commence within one year** from the start date indicated on the Project Agreement. It's important that you, the project sponsor, demonstrate every effort to complete your project within the agreed-upon timeframe indicated on the Project 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 staff 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 staff will explain the requirements for administering the LWCF grants. At the project administration workshop, GMS staff will provide you with a copy of the Project Agreement that will need to be signed by the project sponsor and submitted to the GMS office. Also during this workshop, GMS staff 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, staff will provide instruction on how to register to complete a State of Missouri Vendor Input/ACH-EFT Application (https://oa.mo.gov/sites/default/files/vendor_input_ach_eftd.pdf), which allows reimbursement funds to be transferred electronically to the sponsor's account at their bank or financial institution.

- **Project Agreement (first page labeled as financial assistance agreement).** After attending the workshop, you will be sent a Project Agreement to sign. The Project 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 Project Agreement, you are agreeing to the financial assistance terms and to comply with the attachments incorporated by reference in the Project Agreement, and as described in this guide.

- **Acquisition of real property.** Federally-assisted real property acquisition, which includes property acquired with LWCF funds, 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 project agreement is signed to provide GMS staff 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. 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 staff 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**.

- **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.**

- **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. Any costs incurred prior to the project period start date or prior to receiving a NTP will not be reimbursed, with the exception of certain planning and design costs. Costs in these categories incurred up to nine months prior to project approval and notice to proceed may be reimbursed or used as match if they were identified in your budget table and budget narrative and approved by the NPS. Examples of planning and design costs include site investigation and selection, site planning, preliminary design, environmental assessment, preparation of cost estimates, construction drawings, specifications and similar items necessary for project preparation. 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 6(f)(3) boundary maps, recordation of stewardship obligations 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. Section 6(f)(3) of 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 6(f)(3) for any other purpose than outdoor recreation, a conversion would be required. Section VI outlines the circumstances in which a conversion would be required.

- **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 Project 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 Project Agreement. Please note in Part I, Paragraph D of the 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 DNR'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 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, which prohibits discrimination on the basis of race, color, and national origin, including Limited English Proficiency, in programs and activities receiving federal financial assistance. Appendix C provides a copy of the provisions in Title VI, as outlined in 43 CFR 17, Subpart A.
- Section 504 of the Rehabilitation Act of 1973, which makes it illegal for federal agencies, or programs or activities that receive federal financial assistance or are conducted by a federal agency, to discriminate on the basis of disability. Appendix C provides a copy of the provisions in Section 504 of the Rehabilitation Act, as outlined in 43 CFR 17, Subpart B.
- The Age Discrimination Act of 1975, which prohibits discrimination on the basis of age in programs and activities receiving federal financial assistance. Appendix C provides a copy of the provisions in Section 504 of the Rehabilitation Act, as outlined in 43 CFR 17, Subpart C.
- Title II of the Americans with Disabilities Act (ADA), which prohibits discrimination on the basis of disability in state and local government services. Because of document size, a copy of the Title II rules has not been incorporated in this guide; however, a copy can be downloaded at https://www.ada.gov/regs2010/titleII_2010/titleII_2010_regulations.pdf. Project sponsors are expected to be familiar with the ADA provisions for Title II entities, which are explained in more detail in Section III of this guide.
- Title III of the Americans with Disabilities Act, which prohibits discrimination on the basis of disability by private entities that provide public accommodation. Because of document size, a copy of the Title III rules has not been incorporated in this guide; however, a copy can be downloaded at http://www.ecfr.gov/cgi-bin/text-idx?node=pt28.1.36&rgn=div5. Project sponsors are expected to be familiar with the ADA provisions for Title III entities, particularly as they relate to commercial facilities that provide public accommodation, such as a privately run concession operation in a public park.
- Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex in education programs or activities receiving federal financial assistance. Appendix C provides a copy of the provisions of Title IX, as outlined in 43 CFR 41.
- Executive Order 13166 at 28 C.F.R. § 42.104(b)(2) requires Federal agencies to examine the services they provide, identify any need for services to those with limited English proficiency (LEP), and develop and implement a system to provide those services so LEP persons can have meaningful access to them. This LEP Guidance sets forth the compliance standards that recipients of Federal financial assistance must follow to ensure that their programs and activities normally provided in English are accessible to LEP persons and thus do not discriminate on the basis of national origin in violation of Title VI's prohibition against national origin discrimination. More information about this provision can be found on the Department of Justice's website at: https://www.justice.gov/crt/executive-order-13166.

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 Section 6(f)(3) 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 Section 6(f)(3) 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 (http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr24_main_02.tpl). 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 staff the documentation showing compliance with the Uniform Act. **It's important to remember that you will jeopardize your eligibility for reimbursement if you take title to the property, even if it's a donation, until GMS staff has viewed all compliance documentation and you've received Notice to Proceed (NTP).**

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://www.asc.gov/Pages/FindAnAppraiser.aspx. 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 staff 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 Recorders 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.

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 Project 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 Section 6(f)(3) 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.
- **Project Agreement (first page labeled as financial assistance agreement)**. A signed copy of the Project Agreement must be kept in your project file. The Project 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 Project 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 statues, 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: http://www.nps.gov/ncrc/programs/lwcf/manual/lwcf.pdf. A sample agreement 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.
- **State of Missouri Vendor Input/ACH-EFT Application**. Keep a copy of the completed Vendor Input/ACH-EFT Application in your file, but remember to also submit the application to the Office of Administration. 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. **Do not start any construction activities or acquire property before receiving a NTP.**

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 6(f)(3) 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 DNR's terms and conditions is found in Appendix B.

Contracting with Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms : Pursuant to Executive Orders 11625, 12138, and 12432 and 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, 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. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
2. assuring small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
3. when economically feasible, dividing total requirements into smaller tasks or quantities so as to permit maximum participation by small and minority businesses, and women's business enterprises;
4. where the requirement permits, establishing delivery schedules that will encourage participation by small and minority businesses, and women's business enterprises;
5. as appropriate, using the services and assistance of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
6. if any subcontracts are to be let, requiring the prime contractor to take the affirmative steps in paragraph [1] through [5] above;

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

Contracting for Engineering and Design Related Services:

All procurement of engineering and design services shall conform with the Brooks Act (Qualifications Based Selection). Per RSMo. Chapter 8 Section 291 and the DNR terms and conditions outlined in Appendix B, 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 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, businesses owned and controlled by socially and economically disadvantaged 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." For the procurement of engineering and design services, the project sponsor shall formally advertise through its website and for a minimum of three weeks in a local newspaper a written description of the proposed services request and evaluate responding firms as follows:

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 (proof of advertisement including the affidavit of publication, list of top three contractors, and resume of selected contractor including justification of why they were deemed most qualified) prior to signing a contract with the firm for GMS approval. 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 http://labor.mo.gov/DLS/PrevailingWage/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).
- **E-Verify (Affirmation of Enrollment and Participation in a Federal Work Authorization Program):** 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).

Once GMS has received your request procurement packet, 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 was signed to send GMS a copy of the final contract including the compliance forms listed above.

Contracting for Other Services or Materials:

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 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, businesses owned and controlled by socially and economically disadvantaged 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." The following documentation must be included in the bidding documents.

- **Affidavit of Compliance with Prevailing Wage Law.** The LWCF program excepts the provisions at section VII of the Department of Interior standard terms and conditions related to 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; 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.
- **Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion over $25,000,** 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 http://labor.mo.gov/DLS/PrevailingWage/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).
- **Equal Opportunity Compliance.** All construction contracts and subcontracts in excess of $10,000 must comply with Executive Order 11246 (https://www.dol.gov/ofccp/regs/compliance/ca_11246.htm), which prohibits federal contractors and federally-assisted construction contractors and subcontractors from discriminating in employment decisions on the basis of race, color, religion, sex, national origin, sexual orientation or gender identity. Any solicitation for an offer or bid over $10,000 must include a Notice of Requirements for Affirmative Action and an Equal Opportunity Clause as outlined in 41 CFR 60-4, Public Contracts and Property Management (http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&sid=3b71cb5b215c393fe910604d33c9fed1&rgn=div5&view=text&node=41:1.2.3.1.4&amp ; idno=41). You must also ensure your contractor or bidder complies with the requirement to send written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of $10,000.
- **E-Verify (Affirmation of Enrollment and Participation in a Federal Work Authorization Program):** 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 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).
- **Supplementary General Terms and Condition for Federally Funded/Assisted Construction Projects,** found in Appendix E**.** All work or services performed by the contractor and its subcontractors are be subject to the terms and conditions set forth in the supplementary "General Terms and Conditions for Federally Funded/Assisted Construction Projects" document. This document must physically be incorporated in all construction contracts.

Missouri procurement requirements are described at 8.250 RSMo, and in general provide the following:

Purchase/Service Contracts Under $ 25,000:

For purchase or service contracts under $25,000, a formal bid process is not required. It is recommended, however, that you make every effort to solicit three bids or estimates to ensure the most advantageous and cost-efficient contract is made for your project. Product specifications for bid or estimate solicitations should be based solely on quality and performance and should not be brand-specific, meaning that the specifications listed should not be written in such a way that they cannot be met by more than one manufacturer. Prior approval from GMS is required when soliciting a construction estimate or bid in excess of $10,000, to ensure compliance with the Equal Opportunity provisions outlined above.

Purchase/Service Contracts $25,000 or Greater:

When contracting for a service or purchase of materials of greater than $25,000 or greater, bids must be solicited through a formally-advertised, bid process. Bid specifications should be based solely on quality and performance and should not be brand-specific, meaning that the specifications listed should not be written in such a way that they cannot be met by more than one manufacturer. 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 GMS approval, the request for bids must be publicly advertised for a minimum of three weeks and a copy of the advertisement 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, businesses owned and controlled by socially and economically disadvantaged 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 cleared with GMS before the change order is negotiated. Contractors must sign an affidavit of compliance with prevailing wage law; a certification of non-segregated facilities; a certification regarding debarment, suspension, ineligibility and voluntary exclusion over $25,000; and e-verify.

*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.

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) 2019 Schedule of Equipment Rates to determine the cost of operating various pieces of mechanized equipment (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, up to 25%. A volunteer's donated time should be valued at hourly rates paid for similar work in the area, 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

All development projects exceeding $500,000 in total development costs should have a sign erected during the construction phase acknowledging the use of federal funds in the project. Unless precluded by local signing ordinances, each sign must be at least two feet by three feet and include the source, percent, and dollar amount of all federal and local monies involved in funding your project.

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 will be contacted for further consultation. No work can resume until a new Section 106 Review is satisfactorily completed.

Permitting

To ensure that your project follows all permitting requirements, it is recommended you visit DNR's ePermitting website (http://dnr.mo.gov/env/wpp/epermit/help.htm) to determine which, if any, permits may be required.. Additionally, you are expected to be familiar with and comply with any local permitting requirements that apply to your project. Below is a summary of permits you may be required to obtain.

404/401 Permit

Section 404 of the Clean Water Act (CWA) regulates the discharge of dredged or fill material into jurisdictional waters of the United States. Jurisdictional waters include large lakes, rivers, streams and wetlands, including those that don't always contain water. Activities in jurisdictional waters of the United States regulated under this program include fill for development, water resource projects (such as dams and levees), and infrastructure development. Some specific examples of construction activities that would require permitting include placing culverts under road crossings, placing rip rap along stream banks and installing stormwater outfall pipes. Section 404 requires a federal permit before dredged or fill material may be discharged into waters of the United States, unless the activity is exempt from Section 404 regulation (e.g. certain farming and forestry activities). A state-issued 401 Water Quality Certification (401 Certification) is also needed for any project that needs a federal 404 Permit. The permitting and certification process is shared between the U.S. Army Corps of Engineers (USACE) and the Missouri Department of Natural Resources (DNR).

In order to determine if your project will require a 404 Permit and a 401 Certification, you will need to establish if any of the following are in your project location:

- Creek or stream channel (even if the bed is currently dry)
- Lake
- River
- Drainage ditch
- Wetlands – if you're unsure if your project contains wetlands, look for these indicators: an area that often has standing water; a low spot that holds water for several days after it rains; the water table in the area is not far from the surface; the area is near a river, lake or pond; or the area contains plants more typical of a wetland, such as cattails, rushes and sedges. A useful tool for identifying potential wetlands is the Wetlands Mapper, provided through the National Wetlands Inventory (https://www.fws.gov/wetlands/Data/Mapper.html).

If any of the above conditions exist within your project area, then you will need to determine if your project has the potential to impact any jurisdictional water. Project sponsors are strongly encouraged to hire or consult with a professional who is qualified to identify wetlands and other jurisdictional waters to determine if the project will have an impact on those resources. Many activities involving relatively minor impacts are authorized under Nationwide Permits, or NWPs. To find out if your project falls under a NWP, you will need to contact the USACE District Office that oversees the district in which your project is located. A map of Missouri's USACE districts is available here: http://dnr.mo.gov/env/wpp/401/images/corps-map3.gif. The USACE will indicate whether your project is covered under a NWP or if you will be required to complete an individual 404 permit application (http://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/Obtain-a-Permit/). The USACE will then send you a letter authorizing your project under a particular permit, and will send a copy of your letter to MoDNR. If the USACE's letter to you indicates that MoDNR has "conditionally certified" your activity and the letter includes MoDNR's conditions, you will not need to contact MoDNR for further certification. If the USACE's letter to you indicates that you must obtain an individual 401 certification, please follow the instructions for submitting your application materials to MoDNR, which can be found at http://dnr.mo.gov/env/wpp/401/index.html.

Land Disturbance Permit

The Missouri Department of Natural Resources' Water Protection Program (WPP) implements the National Pollutant Discharge Elimination System (NPDES) Program, including permitting, administrative, and enforcement, as outlined in Section 402 of the federal Clean Water Act. DNR requires a Land Disturbance Permit for projects that disturb one or more acres or disturb less than one acre when part of a larger common plan of development that will disturb a cumulative total of one or more acres over the life of the project. A permit must be obtained and a Stormwater Pollution Prevention Plan written prior to starting land disturbance activities.

For your convenience, DNR has created the ePermitting system to allow you to apply for your Land Disturbance Permit online (http://dnr.mo.gov/env/wpp/epermit/help.htm). To log onto ePermitting, you must enter through DNR's Missouri Gateway for Environmental Management (MoGEM) (https://dnr.mo.gov/mogem/). You may find a help guide on how to register at https://dnr.mo.gov/document-search/registering-new-user-account-within-missouri-gateway-environmental-management-mogem-portal as well as a frequently asked question document at https://dnr.mo.gov/document-search/missouri-gateway-environmental-management-mogem-frequently-asked-questions-pub2988/pub2988 .

For assistance regarding ePermitting, contact ePermitting Assistance Hotline at 573-526-2082 or 855-789-3889 or by email at epermitting@dnr.mo.gov during regular business hours.

Floodplain Development

Communities (cities, counties or states) participating in the National Flood Insurance Program (NFIP) are required to regulate construction in the floodplain. Communities accomplish this by requiring permits for development in special flood hazard areas. Additionally, the Federal Emergency Management Agency (FEMA) has mandated that any project in a floodplain must be reviewed to determine if the project will increase flood heights. FEMA defines a floodplain as any land area susceptible to being inundated by water. The 100-year flood, or a flood with a one percent annual chance of being equaled or exceeded in a given year, has been adopted by FEMA as the base (regulatory) flood for the NFIP. The water surface elevation of the base flood is known as the base flood elevation. A special flood hazard area is land in the floodplain inundated by the 100-year flood and is commonly referred to as the "100-year floodplain." A floodplain development permit is required for any construction in a special flood hazard area. Special flood hazard areas are typically shown as "A zones" on flood insurance maps. To determine if your project is in a floodplain or special flood hazard area, use the FEMA Flood Map Service Center (https://msc.fema.gov/portal). If you determine your project is within a floodplain or special flood hazard area, you must obtain a floodplain development permit from the local floodplain authority (i.e., community or county). For a list of communities and counties participating in the NFIP, see http://www.fema.gov/cis/MO.pdf. In some instances, a No-Rise Certification may be required by the community or county before a permit is issued.

Additionally, the Flood Disaster Protection Act of 1973 requires the purchase of flood insurance as a condition of receiving any federal financial assistance (including LWCF assistance) for acquisition or construction purposes in special flood hazard areas located in any community currently participating in the NFIP. Examples of insurable improvements for which insurance is required include restroom facilities; administrative buildings; bathhouses; interpretive buildings; maintenance buildings and sheds for landscaping tools or other equipment; and sheltered facilities consisting of two or more walled sides and a roof. Examples of improvements for which insurance is not required include open picnic shelters; permanently affixed outdoor play equipment such as swings and slides; sun shades covering outdoor ice skating rinks; and, outdoor swimming pools. The amount of insurance required is either the development cost of the insurable improvement or the maximum limit of coverage made available with respect to the particular type of facility under the National Flood Insurance Act of 1968. The amount is based on the total cost of the insurable improvement, not just the federal share. Whenever flood insurance is available to cover a facility during construction, the project sponsor must obtain coverage as soon as the facility becomes insurable. Coverage is usually available as soon as construction progresses beyond the excavation phase. The sponsor must include proof of insurance in the project closeout packet, as described in Section V.

Burn Permit

The Clean Air Act (CAA) is the federal law that regulates air emissions. Among other things, this law authorizes EPA to establish National Ambient Air Quality Standards (NAAQS) to protect public health and public welfare and to regulate emissions of hazardous air pollutants. Most LWCF projects and project-related activities are exempt from air quality conformity requirements of the CAA, unless the project is considered "regionally significant" as defined by 23 CFR 450.104 (http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&rgn=div5&view=text&node=23:1.0.1.5.11&idno=23) or is located in a nonattainment area. Projects outside the St. Louis and Kansas City Metropolitan Planning Organization (MPO) areas generally will not meet the definition of "regionally significant." For projects within the St. Louis and Kansas City MPO areas, the project sponsor will need to coordinate with the MPO to determine the level of analysis required. For MPO contact information, see http://www.fhwa.dot.gov/modiv/programs/mpo.cfm. If a project is determined to be regionally significant, conformity will be demonstrated through an established process for inclusion in a metropolitan Transportation Improvement Program (TIP). Indicate on the NEPA Determination Form if your project is in either the St. Louis or Kansas City MPO and provide documentation that you've coordinated with the MPO in determining if your project is considered regionally significant.

Air quality standards also regulate open burning. Open burning of tree trunks, tree limbs and vegetation from land clearing operations is allowed without a permit if untreated and done in accordance with state regulations. For information about those requirements, please go to DNR's website: https://dnr.mo.gov/document-search/facts-open-burning-under-missouri-regulations-pub2047/pub2047 . Local jurisdictions (i.e., municipalities, counties, etc.) may have additional restrictions on open burning. Prior to conducting any open burning, the project sponsor should contact the city or county of jurisdiction for any local restrictions or required permits.

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.

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/regs2010/titleII_2010/titleII_2010_regulations.pdf).

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 staff 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 (http://www.fs.fed.us/recreation/programs/accessibility/pubs/htmlpubs/htm12232806/index.htm).

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 staff, 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/opdmd.pdf.

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 staff 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 be submitted on the status of all open projects. Project sponsors must email an annual report to GMS staff, who will then forward the information to the NPS. Your report will be due one year from the project start date identified on your project agreement. 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 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 staff will send you a reminder if your annual report hasn't been submitted.

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. When reviewing your request, GMS staff may require additional information from you such as a revised schedule for completing key milestones and an assurance that the project is still viable. The form should be emailed to the contact information provided on page 2 of this guide.

Change in Project Scope:

Proposed changes to the project scope must be made in writing to GMS staff through email. GMS will in turn coordinate with NPS staff for their approval to ensure that the project eligibility remains valid. 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. A change in project scope may require 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.

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 if it deems the project sponsor is not in compliance with the conditions of the project agreement.

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. 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 the address on page 2 of this guide. Reimbursement requests must include the following:

- **Reimbursement Statement**, provided in Appendix F and also 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. Up to four partial payments can be made during the life of the project but, as stated above, you must submit at least one reimbursement request annually. 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 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. Your reimbursement request cannot exceed 50% of the total project costs for each billing period.
- **Reimbursement Log**, provided in Appendix F and also 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. Billing periods cannot overlap with previous or subsequent billing periods, so pay close attention that dates on invoices, receipts, etc., fall within the current 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 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 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 project 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 nine months prior to project approval and if they were included in your budget table and budget narrative. 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. If submitting a reimbursement request for pre-award planning costs, make sure that all invoices, receipts, etc., are dated within the nine-month period prior to the start date identified on the project agreement. Indicate in

the "Comments" section of the Reimbursement Statement that these are pre-award planning costs. Consult with GMS staff 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. For more information about Missouri prevailing wage rates and how to complete the Contractors Payroll Form (http://labor.mo.gov/sites/default/files/pubs_forms/LS-57-AI.pdf), 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 use on the Equipment Use Log, using one form for each type of equipment used and noting the type of equipment, hours of use, and hourly rate. The Equipment Use Log must be signed by the equipment operator and his/her supervisor. Use the Federal Emergency Management Agency's (FEMA) Schedule of Equipment Rates for 2019 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 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, up to 25%. A volunteer's donated time should be valued at hourly rates paid for similar work in the area, 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 project 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. Cash donations must be documented by a copy of the check from the donor made payable to the project sponsor, and a copy of the project sponsor's bank account statement showing the deposit. 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 Project 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 staff 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. The acknowledgement sign must use the LWCF logo and must be installed prior to the final inspection. 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 sign may be ordered online from the Missouri Vocational Enterprises at https://docservices.mo.gov/mve/products/signsDecals/Specialty/agencySign.html . The cost of the sign may be reimbursed.

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 staff 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 three potential dates when you or someone from your organization who is familiar with the project could meet with GMS staff 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 program. In most cases, there may be no change from the LWCF 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.
  - Name of park or site.
  - 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 Section LWCFprotection.
  - 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 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.
- **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.
- **Recorded Copy of Declaration of Deed Restriction**

Project Dedication

Project sponsors are encouraged to invite GMS staff to any scheduled events promoting the completion of the project, such as dedications or ribbon-cutting ceremonies. GMS staff 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 DNR 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 Section 6(f)(3) of the Land and Water Conservation Fund Act and regulations 36 CFR Part 59.

SECTION V. 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 (DNR 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 project agreement and other applicable program requirements, GMS staff 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 Section 6(f) 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.

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.

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 DNR 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 in all signs, literature and advertising as publicly-owned and operated as a public outdoor recreation facility, 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 Section 6(f)(3) area, a conversion will be triggered.

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 insure the burial, screening, or relocation of existing overhead lines at development or acquisition projects where such lines intrude upon the site's character, and insure 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 Section 6(f)(3) 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 6(f) 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 Section 6(f)(3) protected 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 Section 6(f) 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.

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 staff 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 Section 6(f)(3) protected 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 staff 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:
Section 6(f)(3) of the LWCF Act requires project sponsors maintain the entire area defined in the project 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 staff prior to initiating any such change. GMS staff 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 Section 6(f)(3) of 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, Section 6(f)(3) of the LWCF Act requires project sponsors to maintain the entire area within the Section 6(f)(3) boundary in some form of public outdoor recreation use. 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 staff 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 Section 6(f)(3) of the LWCF Act. Project sponsors must consult early with GMS staff when a conversion is under consideration or has been discovered. GMS staff 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 Section 6(f) park land impacted by any non-recreation, non-public use, especially prior to any appraisal activity. Any previous LWCF project agreements and actions must be identified and understood to determine the actual Section 6(f) 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 a Section 6(f)(3) protected 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 a Section 6(f)(3) protected 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 a Section 6(f)(3) protected 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 a Section 6(f)(3) area from that intended in the original LWCF project 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 project 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 staff can provide guidance on the evaluation process for determining an equivalent substitute. Consult with GMS staff immediately when considering a conversion, for assistance with the conversion process.

ATTACHMENT A
LWCF GENERAL PROVISIONS

Part I – Definitions

A. The term "NPS" as used herein means the National Park Service, United States Department of the Interior (DOI).

B. The term "Director" as used herein means the Director of the National Park Service, or any representative lawfully delegated the authority to act for such Director.

C. The term "Secretary" as used herein means the Secretary of the Interior, or any representative lawfully delegated the authority to act for such Secretary.

D. The term "State" as used herein means the State, Territory, or District of Columbia that is a party to the grant agreement to which these general provisions are attached, and, when applicable, the political subdivision or other public agency to which funds are to be subawarded pursuant to this agreement. Wherever a term, condition, obligation, or requirement refers to the State, such term, condition, obligation, or requirement shall also apply to the political subdivision or public agency, except where it is clear from the nature of the term, condition, obligation, or requirement that it applies solely to the State. For purposes of these provisions, the terms "State," "grantee," and "recipient" are deemed synonymous.

E. The term “Land and Water Conservation Fund” or “LWCF” as used herein means the Financial Assistance to States section of the LWCF Act (Public Law 88-578, 78 Stat 897, codified at 54 U.S.C. § 2003), which is administered by the NPS.

F. The term "Manual" as used herein means the Land and Water Conservation Fund State Assistance Program Manual, Volume 71 (March 11, 2021).

G. The term "project" as used herein refers to an LWCF grant, which is subject to the grant agreement and/or its subsequent amendments.

Part II - Continuing Assurances

The parties to the grant agreement specifically recognize that accepting LWCF assistance for the project creates an obligation to maintain the property described in the agreement and supporting application documentation consistent with the LWCF Act and the following requirements.

Further, it is the acknowledged intent of the parties hereto that recipients of LWCF assistance will use the monies granted hereunder for the purposes of this program, and that assistance granted from the LWCF will result in a net increase, commensurate at least with the Federal cost-share, in a participant's outdoor recreation.

It is intended by both parties hereto that the LWCF assistance will be added to, rather than replace or be substituted for, the State and/or local outdoor recreation funds.

A. The State agrees, as the recipient of the LWCF assistance, that it will meet these LWCF General Provisions, and the terms and provisions as contained or referenced in, or attached to, the NPS grant agreement and that it will further impose these terms and provisions upon any political subdivision or public agency to which funds are subawarded pursuant to the grant agreement. The State also agrees that it shall be responsible for compliance with the terms and provisions of the agreement by such a political subdivision or public agency and that failure by such political subdivision or public agency to so comply

shall be deemed a failure by the State to comply.

B. The State agrees that the property described in the grant agreement and depicted on the signed and dated project boundary map made part of that agreement is being acquired or developed with LWCF assistance, or is integral to such acquisition or development, and that, without the approval of the Secretary, it shall not be converted to other than public outdoor recreation use but shall be maintained in public outdoor recreation in perpetuity or for the term of the lease in the case of property leased from a federal agency. The Secretary shall approve such a conversion only if it is found to be in accord with the then existing statewide comprehensive outdoor recreation plan and only upon such conditions deemed necessary to assure the substitution of other recreation properties of at least equal fair market value and of reasonably equivalent usefulness and location (54 U.S.C. 200305(f)(3)). The LWCF post-completion compliance regulations at 36 C.F.R. Part 59 provide further requirements. The replacement land then becomes subject to LWCF protection. The approval of a conversion shall be at the sole discretion of the Secretary, or her/his designee.

   Prior to the completion of this project, the State and the Director may mutually agree to alter the area described in the grant agreement and depicted in the signed and dated project boundary map to provide the most satisfactory public outdoor recreation unit, except that acquired parcels are afforded LWCF protection as soon as reimbursement is provided.

   In the event the NPS provides LWCF assistance for the acquisition and/or development of property with full knowledge that the project is subject to reversionary rights and outstanding interests, conversion of said property to other than public outdoor recreation use as a result of such right or interest being exercised will occur. In receipt of this approval, the State agrees to notify the NPS of the potential conversion as soon as possible and to seek approval of replacement property in accord with the conditions set forth in these provisions and the program regulations. The provisions of this paragraph are also applicable to: leased properties developed with LWCF assistance where such lease is terminated prior to its full term due to the existence of provisions in such lease known and agreed to by the NPS; and properties subject to other outstanding rights and interests that may result in a conversion when known and agreed to by the NPS.

C. The State agrees that the benefit to be derived by the United States from the full compliance by the State with the terms of this agreement is the preservation, protection, and the net increase in the quality and quantity of public outdoor recreation facilities and resources that are available to the people of the State and of the United States, and such benefit exceeds to an immeasurable and unascertainable extent the amount of money furnished by the United States by way of assistance under the terms of this agreement. The State agrees that payment by the State to the United States of an amount equal to the amount of assistance extended under this agreement by the United States would be inadequate compensation to the United States for any breach by the State of this agreement.

   The State further agrees, therefore, that the appropriate remedy in the event of a breach by the State of this agreement shall be the specific performance of this agreement or the submission and approval of a conversion request as described in Part II.B above.

D. The State agrees to comply with the policies and procedures set forth in the Manual. Provisions of said Manual are incorporated into and made a part of the grant agreement.

E. The State agrees that the property and facilities described in the grant agreement shall be operated and maintained as prescribed by Manual requirements and published post-completion compliance regulations (36 C.F.R Part 59).

F. The State agrees that a notice of the grant agreement shall be recorded in the public property records (e.g., registry of deeds or similar) of the jurisdiction in which the property is located, to the effect that the property described and shown in the scope of the grant agreement and the signed and dated project boundary map made part of that agreement, has been acquired or developed with LWCF assistance and that it cannot be converted to other than public outdoor recreation use without the written approval of the Secretary as described in Part II.B above.

G. Nondiscrimination

1. By signing the LWCF agreement, the State certifies that it will comply with all Federal laws relating to nondiscrimination as outlined in Section V of the Department of the Interior Standard Award Terms and Conditions.

2. The State shall not discriminate against any person on the basis of residence, except to the extent that reasonable differences in admission or other fees may be maintained on the basis of residence, as set forth in 54 U.S.C. § 200305(i) and the Manual.

Part III - Project Assurances

A. Project Application

1. The Application for Federal Assistance bearing the same project number as the Grant Agreement and associated documents is by this reference made a part of the agreement.

2. The State possesses legal authority to apply for the grant, and to finance and construct the proposed facilities. A resolution, motion, or similar action has been duly adopted or passed authorizing the filing of the application, including all understandings and assurances contained herein, and directing and authorizing the person identified as the official representative of the State to act in connection with the application and to provide such additional information as may be required.

3. The State has the capability to finance the non-Federal share of the costs for the project. Sufficient funds will be available to assure effective operation and maintenance of the facilities acquired or developed by the project.

B. Project Execution

1. The State shall transfer to the project sponsor identified in the Application for Federal Assistance all funds granted hereunder except those reimbursed to the State to cover eligible expenses derived from a current approved negotiated indirect cost rate agreement.

2. The State will cause work on the project to start within a reasonable time after receipt of notification that funds have been approved and assure that the project will be implemented to completion with reasonable diligence.

3. The State shall secure completion of the work in accordance with approved construction plans and specifications, and shall secure compliance with all applicable Federal, State, and local laws and regulations.

4. The State will provide for and maintain competent and adequate architectural/engineering supervision

and inspection at the construction site to insure that the completed work conforms with the approved plans and specifications; that it will furnish progress reports and such other information as the NPS may require.

5. In the event the project cannot be completed in accordance with the plans and specifications for the project, the State shall bring the project to a point of recreational usefulness agreed upon by the State and the Director or her/his designee in accord with Section III.C below.

6. As referenced in the DOI Standard Terms and Conditions, the State will ensure the project's compliance with applicable federal laws and their implementing regulations, including: the Architectural Barriers Act of 1968 (P.L. 90-480) and DOI's Section 504 Regulations (43 CFR Part 17); the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) and applicable regulations; and the Flood Disaster Protection Act of 1973 (P.L. 93-234).

7. The State will comply with the provisions of: Executive Order (EO) 11988, relating to evaluation of flood hazards; EO 11288, relating to the prevention, control, and abatement or water pollution, and EO 11990 relating to the protection of wetlands.

8. The State will assist the NPS in its compliance with Section 106 of the National Historic Preservation Act of 1966 (54 U.S.C. § 306108) and the Advisory Council on Historic Preservation regulations (36 C.F.R. Part 800) by adhering to procedural requirements while considering the effect of this grant award on historic properties. The Act requires federal agencies to take into account the effects of their undertaking (grant award) on historic properties by following the process outlined in regulations. That process includes (1) initiating the process through consultation with the State Historic Preservation Officer and others on the undertaking, as necessary, by (2) identifying historic properties listed on or eligible for inclusion on the National Register of Historic Places that are subject to effects by the undertaking, and notifying the NPS of the existence of any such properties, by (3) assessing the effects of the undertaking upon such properties, if present, and by (4) resolving adverse effects through consultation and documentation according to 36 C.F.R. §800.11. If an unanticipated discovery is made during implementation of the undertaking, the State in coordination with NPS shall consult per provisions of 36 C.F.R. §800.13.

9. The State will assist the NPS in its compliance with the National Environmental Policy Act of 1969, as amended (42 U.S.C. §4321 et seq) and the CEQ regulations (40 C.F.R. §1500-1508), by adhering to procedural requirements while considering the consequences of this project on the human environment. This Act requires Federal agencies to take into account the reasonably foreseeable environmental consequences of all grant-supported activities. Grantees are required to provide the NPS with a description of any foreseeable impacts to the environment from grant-supported activities or demonstrate that no impacts will occur through documentation provided to the NPS. The applicant must submit an Application & Revision Form in order to assist the NPS in determining the appropriate NEPA pathway when grant-assisted development and other ground disturbing activities are expected. If a Categorical Exclusion (CE) is the appropriate NEPA pathway, the NPS will confirm which CE, according to NPS Director's Order 12, applies.

C. Project Termination

1. The Director may temporarily suspend Federal assistance under the project pending corrective action by the State or pending a decision to terminate the grant by the NPS.

2. The State may unilaterally terminate the project at any time prior to the first payment on the project.

After the initial payment, the project may be terminated, modified, or amended by the State only by mutual agreement with the NPS.

3. The Director may terminate the project in whole, or in part, at any time before the date of completion whenever it is determined that the grantee has failed to comply with the conditions of the grant. The Director will promptly notify the State in writing of the determination and the reasons for the termination, together with the effective date. Payments made to States or recoveries by the NPS under projects terminated for cause shall be in accord with the legal rights and liabilities of the parties.

4. The Director or State may terminate grants in whole or in part at any time before the date of completion when both parties agree that the continuation of the project would not produce beneficial results commensurate with the further expenditure of funds. The two parties shall agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated. The grantee shall not incur new obligations for the terminated portion after the effective date and shall cancel as many outstanding obligations as possible. The NPS may allow full credit to the State for the Federal share of the non-cancelable obligations, properly incurred by the grantee prior to termination.

5. Termination either for cause or for convenience requires that the project in question be brought to a state of recreational usefulness agreed upon by the State and the Director or that all funds provided by the NPS be returned.

D. Project Closeout

1. The State will determine that all applicable administrative actions, including financial, and all required work as described in the grant agreement has been completed by the end of the project's period of performance.

2. Within 120 calendar days after completing the project or following the Expiration Date of the period of performance, whichever comes first, the State will submit all required documentation as outlined in the Manual and the Federal Financial Report (SF-425) as outlined in Article XIV of this Agreement for approval by the NPS prior to requesting final reimbursement.

3. After review, including any adjustments, and approval from the NPS, the State will request through ASAP the final allowable reimbursable costs. Upon completion of an electronic payment, the State will submit a completed "LWCF Record of Electronic Payment" form to the NPS.

4. The NPS retains the right to disallow costs and recover funds on the basis of later audit or other review within the record retention period.

APPENDIX B. MISSOURI DEPARTMENT OF NATURAL RESOURCES FEDERAL FINANCIAL ASSISTANCE AGREEMENTS GENERAL TERMS AND CONDITIONS

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 statues, 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**. In accordance with Missouri Executive Order No. 15-06 and federal administrative provisions, 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.

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Title 43: Public Lands: Interior

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

Contents

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

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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.

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§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]

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§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]

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§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]

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§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]

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§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]

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§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.

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§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]

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§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]

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§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]

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§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]

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§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]

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§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]

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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. Lampry 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. 460*l*).

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. 460*l*—460*l*-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. 460*l*).

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]

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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]

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Subpart B—Nondiscrimination on the Basis of Handicap

AUTHORITY: 29 U.S.C. 794.

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

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§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.

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§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.

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§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]

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§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 of 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]

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§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.

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§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.

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§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.

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§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.

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§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.

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§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.

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§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.

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§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.

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§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.

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§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.

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§§17.214-17.215 [Reserved]

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§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.

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§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]

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§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]

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§17.219 [Reserved]

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§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.

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§§17.221-17.231 [Reserved]

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§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.

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§§17.233-17.249 [Reserved]

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§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.

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§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.

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§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.

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§§17.253-17.259 [Reserved]

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§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]

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§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]

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§§17.271-17.279 [Reserved]

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§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.

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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.

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§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.

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§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.

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§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.*).

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§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]

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STANDARDS FOR DETERMINING AGE DISCRIMINATION

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§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.

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§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.

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§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.

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§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.

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§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.

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§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.

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DUTIES OF DOI RECIPIENTS

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§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.

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§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.

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§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.

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§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.

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INVESTIGATION, CONCILIATION, AND ENFORCEMENT PROCEDURES

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§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.

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§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.

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§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.

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§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.

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§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.

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§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)(l) 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.

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§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.

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§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.

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§17.338 Alternate funds disbursal 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.

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§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.

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Subpart D [Reserved]

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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.

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§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.

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§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.

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§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.

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§§17.504-17.509 [Reserved]

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§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.

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§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.

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§§17.512-17.529 [Reserved]

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§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.

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§§17.531-17.539 [Reserved]

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§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.

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§§17.541-17.548 [Reserved]

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§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.

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§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.

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§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.

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§§17.552-17.559 [Reserved]

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§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.

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§§17.561-17.569 [Reserved]

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§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.

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(2) San Francisco-Oakland-San Jose, CA.

Official duty station means the duty station for an employee's position of record as indicated on his or her most recent notification of personnel action.

Scheduled annual rate of pay means—

(1) The U.S. Park Police rate of basic pay for the employee's rank and step, exclusive of additional pay of any kind;

(2) A retained rate of pay, where applicable, exclusive of additional pay of any kind.

§ 38.2 Computation of hourly, daily, weekly, and biweekly adjusted rates of pay.

When it is necessary to convert the adjusted annual rate of pay to an hourly, daily, weekly, or biweekly rate, the following methods apply:

(a) To derive an hourly rate, divide the adjusted annual rate of pay by 2,087 and round to the nearest cent, counting one-half cent and over as a whole cent;

(b) To derive a daily rate, multiply the hourly rate by the number of daily hours of service required;

(c) To derive a weekly or biweekly rate, multiply the hourly rate by 40 or 80, as the case may be.

§ 38.3 Administration of adjusted rates of pay.

(a) An employee is entitled to be paid the greater of—

(1) The adjusted annual rate of pay; or

(2) His or her rate of basic pay (including a local special salary rate, where applicable), without regard to any adjustment under this section.

(b) An adjusted rate of pay is considered basic pay for purposes of computing:

(1) Retirement deductions and benefits;

(2) Life insurance premiums and benefits;

(3) Premium pay;

(4) Severance pay;

(c) When an employee's official duty station is changed from a location not in an interim geographic adjustment area to a location in an interim geographic adjustment area, payment of the adjusted rate of pay begins on the effective date of the change in official duty station.

(d) An adjusted rate of pay is paid only for those hours for which an employee is in a pay status.

(e) An adjusted rate of pay shall be adjusted as of the effective date of any change in the applicable scheduled rate of pay.

(f) Except as provided in paragraph (g) of this section, entitlement to an adjusted rate of pay under this subpart terminates on the date.

(1) An employee's official duty station is no longer located in an interim geographic adjustment area;

(2) An employee moves to a position not covered;

(3) An employee separates from Federal service; or

(4) An employee's local special salary rate exceeds his or her adjusted rate of pay.

(g) In the event of a change in the geographic area covered by a CMSA, the effective date of a change in an employee's entitlement to an adjusted rate of pay under this subpart shall be the first day of the first pay period beginning on or after the date on which a change in the definition of a CMSA is made effective.

(h) Payment of or an increase in, an adjusted rate of pay is not an equivalent increase in pay.

(i) An adjusted rate of pay is included in an employee's "total remuneration," and "straight time rate of pay," for the purpose of computations under the Fair Labor Standards Act of 1938, as amended.

(j) Termination of an adjusted rate of pay under paragraph (f) of this section is not an adverse action.

PART 41—NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Subpart A—Introduction

Sec.

AUTHORITY: 20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688.

SOURCE: 65 FR 52865, 52891, Aug. 30, 2000, unless otherwise noted.

Subpart A—Introduction

§ 41.100 Purpose and effective date.

The purpose of these Title IX regulations is to effectuate Title IX of the Education Amendments of 1972, as amended (except sections 904 and 906 of those Amendments) (20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688), which is designed to eliminate (with certain exceptions) discrimination on the basis of sex in any education program or activity receiving Federal financial assistance, whether or not such program or activity is offered or sponsored by an educational institution as defined in these Title IX regulations. The effective date of these Title IX regulations shall be September 29, 2000.

§ 41.105 Definitions.

As used in these Title IX regulations, the term:

Administratively separate unit means a school, department, or college of an educational institution (other than a local educational agency) admission to which is independent of admission to any other component of such institution.

Admission means selection for part-time, full-time, special, associate, transfer, exchange, or any other enrollment, membership, or matriculation in or at an education program or activity operated by a recipient.

Applicant means one who submits an application, request, or plan required to be approved by an official of the Federal agency that awards Federal financial assistance, or by a recipient, as a condition to becoming a recipient.

Designated agency official means Deputy Assistant Secretary for Workforce Diversity.

Educational institution means a local educational agency (LEA) as defined by 20 U.S.C. 8801(18), a preschool, a private elementary or secondary school, or an

applicant or recipient that is an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, or an institution of vocational education, as defined in this section.

Federal financial assistance means any of the following, when authorized or extended under a law administered by the Federal agency that awards such assistance:

(1) A grant or loan of Federal financial assistance, including funds made available for:

(i) The acquisition, construction, renovation, restoration, or repair of a building or facility or any portion thereof; and

(ii) Scholarships, loans, grants, wages, or other funds extended to any entity for payment to or on behalf of students admitted to that entity, or extended directly to such students for payment to that entity.

(2) A grant of Federal real or personal property or any interest therein, including surplus property, and the proceeds of the sale or transfer of such property, if the Federal share of the fair market value of the property is not, upon such sale or transfer, properly accounted for to the Federal Government.

(3) Provision of the services of Federal personnel.

(4) Sale or lease of Federal property or any interest therein at nominal consideration, or at consideration reduced for the purpose of assisting the recipient or in recognition of public interest to be served thereby, or permission to use Federal property or any interest therein without consideration.

(5) Any other contract, agreement, or arrangement that has as one of its purposes the provision of assistance to any education program or activity, except a contract of insurance or guaranty.

Institution of graduate higher education means an institution that:

(1) Offers academic study beyond the bachelor of arts or bachelor of science degree, whether or not leading to a certificate of any higher degree in the liberal arts and sciences;

(2) Awards any degree in a professional field beyond the first professional degree (regardless of whether the first professional degree in such field is awarded by an institution of undergraduate higher education or professional education); or

(3) Awards no degree and offers no further academic study, but operates ordinarily for the purpose of facilitating research by persons who have received the highest graduate degree in any field of study.

Institution of professional education means an institution (except any institution of undergraduate higher education) that offers a program of academic study that leads to a first professional degree in a field for which there is a national specialized accrediting agency recognized by the Secretary of Education.

Institution of undergraduate higher education means:

(1) An institution offering at least two but less than four years of college-level study beyond the high school level, leading to a diploma or an associate degree, or wholly or principally creditable toward a baccalaureate degree; or

(2) An institution offering academic study leading to a baccalaureate degree; or

(3) An agency or body that certifies credentials or offers degrees, but that may or may not offer academic study.

Institution of vocational education means a school or institution (except an institution of professional or graduate or undergraduate higher education) that has as its primary purpose preparation of students to pursue a technical, skilled, or semiskilled occupation or trade, or to pursue study in a technical field, whether or not the school or institution offers certificates, diplomas, or degrees and whether or not it offers full-time study.

Recipient means any State or political subdivision thereof, or any instrumentality of a State or political subdivision thereof, any public or private agency, institution, or organization, or other entity, or any person, to whom Federal financial assistance is extended directly or through another recipient and that operates an education program or activity that receives such assistance, including any subunit, successor, assignee, or transferee thereof.

Student means a person who has gained admission.

Title IX means Title IX of the Education Amendments of 1972, Public Law 92–318, 86 Stat. 235, 373 (codified as amended at 20 U.S.C. 1681–1688) (except sections 904 and 906 thereof), as amended by section 3 of Public Law 93–568, 88 Stat. 1855, by section 412 of the Education Amendments of 1976, Public Law 94–482, 90 Stat. 2234, and by Section 3 of Public Law 100–259, 102 Stat. 28, 28–29 (20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688).

Title IX regulations means the provisions set forth at §§ 41.100 through 41.605.

Transition plan means a plan subject to the approval of the Secretary of Education pursuant to section 901(a)(2) of the Education Amendments of 1972, 20 U.S.C. 1681(a)(2), under which an educational institution operates in making the transition from being an educational institution that admits only students of one sex to being one that admits students of both sexes without discrimination.

[65 FR 52865, 52891, 52892, Aug. 30, 2000]

§ 41.110 Remedial and affirmative action and self-evaluation.

(a) *Remedial action.* If the designated agency official finds that a recipient has discriminated against persons on the basis of sex in an education program or activity, such recipient shall take such remedial action as the designated agency official deems necessary to overcome the effects of such discrimination.

(b) *Affirmative action.* In the absence of a finding of discrimination on the basis of sex in an education program or activity, a recipient may take affirmative action consistent with law to overcome the effects of conditions that resulted in limited participation therein by persons of a particular sex. Nothing in these Title IX regulations shall be interpreted to alter any affirmative action obligations that a recipient may have under Executive Order 11246, 3 CFR, 1964–1965 Comp., p. 339; as amended by Executive Order 11375, 3 CFR, 1966–1970 Comp., p. 684; as amended by Executive Order 11478, 3 CFR, 1966–1970 Comp., p. 803; as amended by Executive Order 12086, 3 CFR, 1978 Comp., p. 230; as amended by Executive Order 12107, 3 CFR, 1978 Comp., p. 264.

(c) *Self-evaluation.* Each recipient education institution shall, within one year of September 29, 2000:

(1) Evaluate, in terms of the requirements of these Title IX regulations, its current policies and practices and the effects thereof concerning admission of students, treatment of students, and employment of both academic and nonacademic personnel working in connection with the recipient's education program or activity;

(2) Modify any of these policies and practices that do not or may not meet the requirements of these Title IX regulations; and

(3) Take appropriate remedial steps to eliminate the effects of any discrimination that resulted or may have resulted from adherence to these policies and practices.

(d) *Availability of self-evaluation and related materials.* Recipients shall maintain on file for at least three years following completion of the evaluation required under paragraph (c) of this section, and shall provide to the designated agency official upon request, a description of any modifications made pursuant to paragraph (c)(2) of this section and of any remedial steps taken pursuant to paragraph (c)(3) of this section.

§ 41.115 Assurance required.

(a) *General.* Either at the application stage or the award stage, Federal agencies must ensure that applications for Federal financial assistance or awards of Federal financial assistance contain, be accompanied by, or be covered by a specifically identified assurance from the applicant or recipient, satisfactory to the designated agency official, that each education program or activity operated by the applicant or recipient and to which these Title IX regulations apply will be operated in compliance with these Title IX regulations. An assurance of compliance with these Title IX regulations shall not be satisfactory to the designated agency official if the applicant or recipient to whom such assurance applies fails to commit itself to take whatever remedial action is necessary in accordance with § 41.110(a) to eliminate existing discrimination on

the basis of sex or to eliminate the effects of past discrimination whether occurring prior to or subsequent to the submission to the designated agency official of such assurance.

(b) *Duration of obligation.* (1) In the case of Federal financial assistance extended to provide real property or structures thereon, such assurance shall 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 to provide an education program or activity.

(2) In the case of Federal financial assistance extended to provide personal property, such assurance shall obligate the recipient for the period during which it retains ownership or possession of the property.

(3) In all other cases such assurance shall obligate the recipient for the period during which Federal financial assistance is extended.

(c) *Form.* (1) The assurances required by paragraph (a) of this section, which may be included as part of a document that addresses other assurances or obligations, shall include that the applicant or recipient will comply with all applicable Federal statutes relating to nondiscrimination. These include but are not limited to: Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681–1683, 1685–1688).

(2) The designated agency official will specify the extent to which such assurances will be required of the applicant's or recipient's subgrantees, contractors, subcontractors, transferees, or successors in interest.

§ 41.120 Transfers of property.

If a recipient sells or otherwise transfers property financed in whole or in part with Federal financial assistance to a transferee that operates any education program or activity, and the Federal share of the fair market value of the property is not upon such sale or transfer properly accounted for to the Federal Government, both the transferor and the transferee shall be deemed to be recipients, subject to the provisions of §§ 41.205 through 41.235(a).

§ 41.125 Effect of other requirements.

(a) *Effect of other Federal provisions.* The obligations imposed by these Title IX regulations are independent of, and do not alter, obligations not to discriminate on the basis of sex imposed by Executive Order 11246, 3 CFR, 1964–1965 Comp., p. 339; as amended by Executive Order 11375, 3 CFR, 1966–1970 Comp., p. 684; as amended by Executive Order 11478, 3 CFR, 1966–1970 Comp., p. 803; as amended by Executive Order 12087, 3 CFR, 1978 Comp., p. 230; as amended by Executive Order 12107, 3 CFR, 1978 Comp., p. 264; sections 704 and 855 of the Public Health Service Act (42 U.S.C. 295m, 298b-2); Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e *et seq.*); the Equal Pay Act of 1963 (29 U.S.C. 206); and any other Act of Congress or Federal regulation.

(b) *Effect of State or local law or other requirements.* The obligation to comply with these Title IX regulations is not obviated or alleviated by any State or local law or other requirement that would render any applicant or student ineligible, or limit the eligibility of any applicant or student, on the basis of sex, to practice any occupation or profession.

(c) *Effect of rules or regulations of private organizations.* The obligation to comply with these Title IX regulations is not obviated or alleviated by any rule or regulation of any organization, club, athletic or other league, or association that would render any applicant or student ineligible to participate or limit the eligibility or participation of any applicant or student, on the basis of sex, in any education program or activity operated by a recipient and that receives Federal financial assistance.

§ 41.130 Effect of employment opportunities.

The obligation to comply with these Title IX regulations is not obviated or alleviated because employment opportunities in any occupation or profession are or may be more limited for members of one sex than for members of the other sex.

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

(a) *Designation of responsible employee.* Each recipient shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under these Title IX regulations, including any investigation of any complaint communicated to such recipient alleging its noncompliance with these Title IX regulations or alleging any actions that would be prohibited by these Title IX regulations. The recipient shall notify all its students and employees of the name, office address, and telephone number of the employee or employees appointed pursuant to this paragraph.

(b) *Complaint procedure of recipient.* A recipient shall adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints alleging any action that would be prohibited by these Title IX regulations.

§ 41.140 Dissemination of policy.

(a) *Notification of policy.* (1) Each recipient shall implement specific and continuing steps to notify applicants for admission and employment, students and parents of elementary and secondary school students, employees, sources of referral of applicants for admission and employment, and all unions or professional organizations holding collective bargaining or professional agreements with the recipient, that it does not discriminate on the basis of sex in the educational programs or activities that it operates, and that it is required by Title IX and these Title IX regulations not to discriminate in such a manner. Such notification shall contain such information, and be made in such manner, as the designated agency official finds necessary to apprise such persons of the protections against discrimination assured them by Title IX and these Title IX regulations, but shall state at least that the requirement not to discriminate in education programs or activities extends to employment therein, and to admission thereto unless §§ 41.300 through 41.310 do not apply to the recipient, and that inquiries concerning the application of Title IX and these Title IX regulations to such recipient may be referred to the employee designated pursuant to § 41.135, or to the designated agency official.

(2) Each recipient shall make the initial notification required by paragraph (a)(1) of this section within 90 days of September 29, 2000 or of the date these Title IX regulations first apply to such recipient, whichever comes later, which notification shall include publication in:

(i) Newspapers and magazines operated by such recipient or by student, alumnae, or alumni groups for or in connection with such recipient; and

(ii) Memoranda or other written communications distributed to every student and employee of such recipient.

(b) *Publications.* (1) Each recipient shall prominently include a statement of the policy described in paragraph (a) of this section in each announcement, bulletin, catalog, or application form that it makes available to any person of a type, described in paragraph (a) of this section, or which is otherwise used in connection with the recruitment of students or employees.

(2) A recipient shall not use or distribute a publication of the type described in paragraph (b)(1) of this section that suggests, by text or illustration, that such recipient treats applicants, students, or employees differently on the basis of sex except as such treatment is permitted by these Title IX regulations.

(c) *Distribution.* Each recipient shall distribute without discrimination on the basis of sex each publication described in paragraph (b)(1) of this section, and shall apprise each of its admission and employment recruitment representatives of the policy of nondiscrimination described in paragraph (a) of this section, and shall require such representatives to adhere to such policy.

Subpart B—Coverage

§ 41.200 Application.

Except as provided in §§ 41.205 through 41.235(a), these Title IX regulations apply to every recipient and to each education program or activity operated by such recipient that receives Federal financial assistance.

§ 41.205 Educational institutions and other entities controlled by religious organizations.

(a) *Exemption.* These Title IX regulations do not apply to any operation of an educational institution or other entity that is controlled by a religious organization to the extent that application of these Title IX regulations would not be consistent with the religious tenets of such organization.

(b) *Exemption claims.* An educational institution or other entity that wishes to claim the exemption set forth in paragraph (a) of this section shall do so by submitting in writing to the designated agency official a statement by the highest-ranking official of the institution, identifying the provisions of these Title IX regulations that conflict with a specific tenet of the religious organization.

§ 41.210 Military and merchant marine educational institutions.

These Title IX regulations do not apply to an educational institution whose primary purpose is the training of individuals for a military service of the United States or for the merchant marine.

§ 41.215 Membership practices of certain organizations.

(a) *Social fraternities and sororities.* These Title IX regulations do not apply to the membership practices of social fraternities and sororities that are exempt from taxation under section 501(a) of the Internal Revenue Code of 1954, 26 U.S.C. 501(a), the active membership of which consists primarily of students in attendance at institutions of higher education.

(b) *YMCA, YWCA, Girl Scouts, Boy Scouts, and Camp Fire Girls.* These Title IX regulations do not apply to the membership practices of the Young Men's Christian Association (YMCA), the Young Women's Christian Association (YWCA), the Girl Scouts, the Boy Scouts, and Camp Fire Girls.

(c) *Voluntary youth service organizations.* These Title IX regulations do not apply to the membership practices of a voluntary youth service organization that is exempt from taxation under section 501(a) of the Internal Revenue Code of 1954, 26 U.S.C. 501(a), and the membership of which has been traditionally limited to members of one sex and principally to persons of less than nineteen years of age.

§ 41.220 Admissions.

(a) Admissions to educational institutions prior to June 24, 1973, are not covered by these Title IX regulations.

(b) *Administratively separate units.* For the purposes only of this section, §§ 41.225 and 41.230, and §§ 41.300 through 41.310, each administratively separate unit shall be deemed to be an educational institution.

(c) *Application of §§ 41.300 through .310.* Except as provided in paragraphs (d) and (e) of this section, §§ 41.300 through 41.310 apply to each recipient. A recipient to which §§ 41.300 through 41.310 apply shall not discriminate on the basis of sex in admission or recruitment in violation of §§ 41.300 through 41.310.

(d) *Educational institutions.* Except as provided in paragraph (e) of this section as to recipients that are educational institutions, §§ 41.300 through 41.310 apply only to institutions of vocational education, professional education, graduate higher education, and public institutions of undergraduate higher education.

(e) *Public institutions of undergraduate higher education.* §§ 41.300 through 41.310 do not apply to any public institution of undergraduate higher education that traditionally and continually from its establishment has had a policy of admitting students of only one sex.

§ 41.225 Educational institutions eligible to submit transition plans.

(a) *Application.* This section applies to each educational institution to which §§ 41.300 through 41.310 apply that:

(1) Admitted students of only one sex as regular students as of June 23, 1972; or

(2) Admitted students of only one sex as regular students as of June 23, 1965, but thereafter admitted, as regular students, students of the sex not admitted prior to June 23, 1965.

(b) *Provision for transition plans.* An educational institution to which this section applies shall not discriminate

on the basis of sex in admission or recruitment in violation of §§ 41.300 through 41.310.

§ 41.230 Transition plans.

(a) *Submission of plans.* An institution to which § 41.225 applies and that is composed of more than one administratively separate unit may submit either a single transition plan applicable to all such units, or a separate transition plan applicable to each such unit.

(b) *Content of plans.* In order to be approved by the Secretary of Education, a transition plan shall:

(1) State the name, address, and Federal Interagency Committee on Education Code of the educational institution submitting such plan, the administratively separate units to which the plan is applicable, and the name, address, and telephone number of the person to whom questions concerning the plan may be addressed. The person who submits the plan shall be the chief administrator or president of the institution, or another individual legally authorized to bind the institution to all actions set forth in the plan.

(2) State whether the educational institution or administratively separate unit admits students of both sexes as regular students and, if so, when it began to do so.

(3) Identify and describe with respect to the educational institution or administratively separate unit any obstacles to admitting students without discrimination on the basis of sex.

(4) Describe in detail the steps necessary to eliminate as soon as practicable each obstacle so identified and indicate the schedule for taking these steps and the individual directly responsible for their implementation.

(5) Include estimates of the number of students, by sex, expected to apply for, be admitted to, and enter each class during the period covered by the plan.

(c) *Nondiscrimination.* No policy or practice of a recipient to which § 41.225 applies shall result in treatment of applicants to or students of such recipient in violation of §§ 41.300 through 41.310 unless such treatment is necessitated by an obstacle identified in paragraph (b)(3) of this section and a schedule for eliminating that obstacle has been provided as required by paragraph (b)(4) of this section.

(d) *Effects of past exclusion.* To overcome the effects of past exclusion of students on the basis of sex, each educational institution to which § 41.225 applies shall include in its transition plan, and shall implement, specific steps designed to encourage individuals of the previously excluded sex to apply for admission to such institution. Such steps shall include instituting recruitment programs that emphasize the institution's commitment to enrolling students of the sex previously excluded.

§ 41.235 Statutory amendments.

(a) This section, which applies to all provisions of these Title IX regulations, addresses statutory amendments to Title IX.

(b) These Title IX regulations shall not apply to or preclude:

(1) Any program or activity of the American Legion undertaken in connection with the organization or operation of any Boys State conference, Boys Nation conference, Girls State conference, or Girls Nation conference;

(2) Any program or activity of a secondary school or educational institution specifically for:

(i) The promotion of any Boys State conference, Boys Nation conference, Girls State conference, or Girls Nation conference; or

(ii) The selection of students to attend any such conference;

(3) Father-son or mother-daughter activities at an educational institution or in an education program or activity, but if such activities are provided for students of one sex, opportunities for reasonably comparable activities shall be provided to students of the other sex;

(4) Any scholarship or other financial assistance awarded by an institution of higher education to an individual because such individual has received such award in a single-sex pageant based upon a combination of factors related to the individual's personal appearance, poise, and talent. The pageant, however, must comply with other nondiscrimination provisions of Federal law.

(c) *Program or activity* or *program* means:

(1) All of the operations of any entity described in paragraphs (c)(1)(i) through (iv) of this section, any part of which is extended Federal financial assistance:

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

(B) 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;

(ii)(A) A college, university, or other postsecondary institution, or a public system of higher education; or

(B) A local educational agency (as defined in section 8801 of title 20), system of vocational education, or other school system;

(iii)(A) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(*1*) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(*2*) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(B) 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

(iv) Any other entity that is established by two or more of the entities described in paragraphs (c)(1)(i), (ii), or (iii) of this section.

(2)(i) *Program or activity* does not include any operation of an entity that is controlled by a religious organization if the application of 20 U.S.C. 1681 to such operation would not be consistent with the religious tenets of such organization.

(ii) For example, all of the operations of a college, university, or other postsecondary institution, including but not limited to traditional educational operations, faculty and student housing, campus shuttle bus service, campus restaurants, the bookstore, and other commercial activities are part of a "program or activity" subject to these Title IX regulations if the college, university, or other institution receives Federal financial assistance.

(d)(1) Nothing in these Title IX regulations shall be construed to require or prohibit any person, or public or private entity, to provide or pay for any benefit or service, including the use of facilities, related to an abortion. Medical procedures, benefits, services, and the use of facilities, necessary to save the life of a pregnant woman or to address complications related to an abortion are not subject to this section.

(2) Nothing in this section shall be construed to permit a penalty to be imposed on any person or individual because such person or individual is seeking or has received any benefit or service related to a legal abortion. Accordingly, subject to paragraph (d)(1) of this section, no person shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, employment, or other educational program or activity operated by a recipient that receives Federal financial assistance because such individual has sought or received, or is seeking, a legal abortion, or any benefit or service related to a legal abortion.

Subpart C—Discrimination on the Basis of Sex in Admission and Recruitment Prohibited

§ 41.300 Admission.

(a) *General.* No person shall, on the basis of sex, be denied admission, or be subjected to discrimination in admission, by any recipient to which §§ 41.300 through §§ 41.310 apply, except as provided in §§ 41.225 and §§ 41.230.

(b) *Specific prohibitions.* (1) In determining whether a person satisfies any policy or criterion for admission, or in making any offer of admission, a recipient to which §§ 41.300 through 41.310 apply shall not:

(i) Give preference to one person over another on the basis of sex, by ranking

applicants separately on such basis, or otherwise;

(ii) Apply numerical limitations upon the number or proportion of persons of either sex who may be admitted; or

(iii) Otherwise treat one individual differently from another on the basis of sex.

(2) A recipient shall not administer or operate any test or other criterion for admission that has a disproportionately adverse effect on persons on the basis of sex unless the use of such test or criterion is shown to predict validly success in the education program or activity in question and alternative tests or criteria that do not have such a disproportionately adverse effect are shown to be unavailable.

(c) *Prohibitions relating to marital or parental status.* In determining whether a person satisfies any policy or criterion for admission, or in making any offer of admission, a recipient to which §§ 41.300 through 41.310 apply:

(1) Shall not apply any rule concerning the actual or potential parental, family, or marital status of a student or applicant that treats persons differently on the basis of sex;

(2) Shall not discriminate against or exclude any person on the basis of pregnancy, childbirth, termination of pregnancy, or recovery therefrom, or establish or follow any rule or practice that so discriminates or excludes;

(3) Subject to § 41.235(d), shall treat disabilities related to pregnancy, childbirth, termination of pregnancy, or recovery therefrom in the same manner and under the same policies as any other temporary disability or physical condition; and

(4) Shall not make pre-admission inquiry as to the marital status of an applicant for admission, including whether such applicant is "Miss" or "Mrs." A recipient may make pre-admission inquiry as to the sex of an applicant for admission, but only if such inquiry is made equally of such applicants of both sexes and if the results of such inquiry are not used in connection with discrimination prohibited by these Title IX regulations.

§ 41.305 Preference in admission.

A recipient to which §§ 41.300 through 41.310 apply shall not give preference to applicants for admission, on the basis of attendance at any educational institution or other school or entity that admits as students only or predominantly members of one sex, if the giving of such preference has the effect of discriminating on the basis of sex in violation of §§ 41.300 through 41.310.

§ 41.310 Recruitment.

(a) *Nondiscriminatory recruitment.* A recipient to which §§ 41.300 through 41.310 apply shall not discriminate on the basis of sex in the recruitment and admission of students. A recipient may be required to undertake additional recruitment efforts for one sex as remedial action pursuant to § 41.110(a), and may choose to undertake such efforts as affirmative action pursuant to § 41.110(b).

(b) *Recruitment at certain institutions.* A recipient to which §§ 41.300 through 41.310 apply shall not recruit primarily or exclusively at educational institutions, schools, or entities that admit as students only or predominantly members of one sex, if such actions have the effect of discriminating on the basis of sex in violation of §§ 41.300 through 41.310.

Subpart D—Discrimination on the Basis of Sex in Education Programs or Activities Prohibited

§ 41.400 Education programs or activities.

(a) *General.* Except as provided elsewhere in these Title IX regulations, no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, or other education program or activity operated by a recipient that receives Federal financial assistance. Sections 41.400 through 41.455 do not apply to actions of a recipient in connection with admission of its students to an education program or activity of a recipient to which §§ 41.300 through 41.310 do not apply, or an entity, not a recipient, to which §§ 41.300 through 41.310 would not apply if the entity were a recipient.

(b) *Specific prohibitions.* Except as provided in §§ 41.400 through 41.455, in providing any aid, benefit, or service to a student, a recipient shall not, on the basis of sex:

(1) Treat one person differently from another in determining whether such person satisfies any requirement or condition for the provision of such aid, benefit, or service;

(2) Provide different aid, benefits, or services or provide aid, benefits, or services in a different manner;

(3) Deny any person any such aid, benefit, or service;

(4) Subject any person to separate or different rules of behavior, sanctions, or other treatment;

(5) Apply any rule concerning the domicile or residence of a student or applicant, including eligibility for in-state fees and tuition;

(6) Aid or perpetuate discrimination against any person by providing significant assistance to any agency, organization, or person that discriminates on the basis of sex in providing any aid, benefit, or service to students or employees;

(7) Otherwise limit any person in the enjoyment of any right, privilege, advantage, or opportunity.

(c) *Assistance administered by a recipient educational institution to study at a foreign institution.* A recipient educational institution may administer or assist in the administration of scholarships, fellowships, or other awards established by foreign or domestic wills, trusts, or similar legal instruments, or by acts of foreign governments and restricted to members of one sex, that are designed to provide opportunities to study abroad, and that are awarded to students who are already matriculating at or who are graduates of the recipient institution; *Provided,* that a recipient educational institution that administers or assists in the administration of such scholarships, fellowships, or other awards that are restricted to members of one sex provides, or otherwise makes available, reasonable opportunities for similar studies for members of the other sex. Such opportunities may be derived from either domestic or foreign sources.

(d) *Aids, benefits or services not provided by recipient.* (1) This paragraph (d) applies to any recipient that requires participation by any applicant, student, or employee in any education program or activity not operated wholly by such recipient, or that facilitates, permits, or considers such participation as part of or equivalent to an education program or activity operated by such recipient, including participation in educational consortia and cooperative employment and student-teaching assignments.

(2) Such recipient:

(i) Shall develop and implement a procedure designed to assure itself that the operator or sponsor of such other education program or activity takes no action affecting any applicant, student, or employee of such recipient that these Title IX regulations would prohibit such recipient from taking; and

(ii) Shall not facilitate, require, permit, or consider such participation if such action occurs.

§ 41.405 Housing.

(a) *Generally.* A recipient shall not, on the basis of sex, apply different rules or regulations, impose different fees or requirements, or offer different services or benefits related to housing, except as provided in this section (including housing provided only to married students).

(b) *Housing provided by recipient.* (1) A recipient may provide separate housing on the basis of sex.

(2) Housing provided by a recipient to students of one sex, when compared to that provided to students of the other sex, shall be as a whole:

(i) Proportionate in quantity to the number of students of that sex applying for such housing; and

(ii) Comparable in quality and cost to the student.

(c) *Other housing.* (1) A recipient shall not, on the basis of sex, administer different policies or practices concerning occupancy by its students of housing other than that provided by such recipient.

(2)(i) A recipient which, through solicitation, listing, approval of housing, or otherwise, assists any agency, organization, or person in making housing available to any of its students, shall

take such reasonable action as may be necessary to assure itself that such housing as is provided to students of one sex, when compared to that provided to students of the other sex, is as a whole:

(A) Proportionate in quantity; and

(B) Comparable in quality and cost to the student.

(ii) A recipient may render such assistance to any agency, organization, or person that provides all or part of such housing to students of only one sex.

§ 41.410 Comparable facilities.

A recipient may provide separate toilet, locker room, and shower facilities on the basis of sex, but such facilities provided for students of one sex shall be comparable to such facilities provided for students of the other sex.

§ 41.415 Access to course offerings.

(a) A recipient shall not provide any course or otherwise carry out any of its education program or activity separately on the basis of sex, or require or refuse participation therein by any of its students on such basis, including health, physical education, industrial, business, vocational, technical, home economics, music, and adult education courses.

(b)(1) With respect to classes and activities in physical education at the elementary school level, the recipient shall comply fully with this section as expeditiously as possible but in no event later than one year from September 29, 2000. With respect to physical education classes and activities at the secondary and post-secondary levels, the recipient shall comply fully with this section as expeditiously as possible but in no event later than three years from September 29, 2000.

(2) This section does not prohibit grouping of students in physical education classes and activities by ability as assessed by objective standards of individual performance developed and applied without regard to sex.

(3) This section does not prohibit separation of students by sex within physical education classes or activities during participation in wrestling, boxing, rugby, ice hockey, football, basketball, and other sports the purpose or major activity of which involves bodily contact.

(4) Where use of a single standard of measuring skill or progress in a physical education class has an adverse effect on members of one sex, the recipient shall use appropriate standards that do not have such effect.

(5) Portions of classes in elementary and secondary schools, or portions of education programs or activities, that deal exclusively with human sexuality may be conducted in separate sessions for boys and girls.

(6) Recipients may make requirements based on vocal range or quality that may result in a chorus or choruses of one or predominantly one sex.

§ 41.420 Access to schools operated by LEAs.

A recipient that is a local educational agency shall not, on the basis of sex, exclude any person from admission to:

(a) Any institution of vocational education operated by such recipient; or

(b) Any other school or educational unit operated by such recipient, unless such recipient otherwise makes available to such person, pursuant to the same policies and criteria of admission, courses, services, and facilities comparable to each course, service, and facility offered in or through such schools.

§ 41.425 Counseling and use of appraisal and counseling materials.

(a) *Counseling.* A recipient shall not discriminate against any person on the basis of sex in the counseling or guidance of students or applicants for admission.

(b) *Use of appraisal and counseling materials.* A recipient that uses testing or other materials for appraising or counseling students shall not use different materials for students on the basis of their sex or use materials that permit or require different treatment of students on such basis unless such different materials cover the same occupations and interest areas and the use of such different materials is shown to be essential to eliminate sex bias. Recipients shall develop and use internal procedures for ensuring that such materials do not discriminate on the basis

of sex. Where the use of a counseling test or other instrument results in a substantially disproportionate number of members of one sex in any particular course of study or classification, the recipient shall take such action as is necessary to assure itself that such disproportion is not the result of discrimination in the instrument or its application.

(c) *Disproportion in classes.* Where a recipient finds that a particular class contains a substantially disproportionate number of individuals of one sex, the recipient shall take such action as is necessary to assure itself that such disproportion is not the result of discrimination on the basis of sex in counseling or appraisal materials or by counselors.

§ 41.430 Financial assistance.

(a) *General.* Except as provided in paragraphs (b) and (c) of this section, in providing financial assistance to any of its students, a recipient shall not:

(1) On the basis of sex, provide different amounts or types of such assistance, limit eligibility for such assistance that is of any particular type or source, apply different criteria, or otherwise discriminate;

(2) Through solicitation, listing, approval, provision of facilities, or other services, assist any foundation, trust, agency, organization, or person that provides assistance to any of such recipient's students in a manner that discriminates on the basis of sex; or

(3) Apply any rule or assist in application of any rule concerning eligibility for such assistance that treats persons of one sex differently from persons of the other sex with regard to marital or parental status.

(b) *Financial aid established by certain legal instruments.* (1) A recipient may administer or assist in the administration of scholarships, fellowships, or other forms of financial assistance established pursuant to domestic or foreign wills, trusts, bequests, or similar legal instruments or by acts of a foreign government that require that awards be made to members of a particular sex specified therein; *Provided,* that the overall effect of the award of such sex-restricted scholarships, fellowships, and other forms of financial assistance does not discriminate on the basis of sex.

(2) To ensure nondiscriminatory awards of assistance as required in paragraph (b)(1) of this section, recipients shall develop and use procedures under which:

(i) Students are selected for award of financial assistance on the basis of nondiscriminatory criteria and not on the basis of availability of funds restricted to members of a particular sex;

(ii) An appropriate sex-restricted scholarship, fellowship, or other form of financial assistance is allocated to each student selected under paragraph (b)(2)(i) of this section; and

(iii) No student is denied the award for which he or she was selected under paragraph (b)(2)(i) of this section because of the absence of a scholarship, fellowship, or other form of financial assistance designated for a member of that student's sex.

(c) *Athletic scholarships.* (1) To the extent that a recipient awards athletic scholarships or grants-in-aid, it must provide reasonable opportunities for such awards for members of each sex in proportion to the number of students of each sex participating in interscholastic or intercollegiate athletics.

(2) A recipient may provide separate athletic scholarships or grants-in-aid for members of each sex as part of separate athletic teams for members of each sex to the extent consistent with this paragraph (c) and § 41.450.

§ 41.435 Employment assistance to students.

(a) *Assistance by recipient in making available outside employment.* A recipient that assists any agency, organization, or person in making employment available to any of its students:

(1) Shall assure itself that such employment is made available without discrimination on the basis of sex; and

(2) Shall not render such services to any agency, organization, or person that discriminates on the basis of sex in its employment practices.

(b) *Employment of students by recipients.* A recipient that employs any of its students shall not do so in a manner that violates §§ 41.500 through 41.550.

§ 41.440 Health and insurance benefits and services.

Subject to § 41.235(d), in providing a medical, hospital, accident, or life insurance benefit, service, policy, or plan to any of its students, a recipient shall not discriminate on the basis of sex, or provide such benefit, service, policy, or plan in a manner that would violate §§ 41.500 through 41.550 if it were provided to employees of the recipient. This section shall not prohibit a recipient from providing any benefit or service that may be used by a different proportion of students of one sex than of the other, including family planning services. However, any recipient that provides full coverage health service shall provide gynecological care.

§ 41.445 Marital or parental status.

(a) *Status generally.* A recipient shall not apply any rule concerning a student's actual or potential parental, family, or marital status that treats students differently on the basis of sex.

(b) *Pregnancy and related conditions.* (1) A recipient shall not discriminate against any student, or exclude any student from its education program or activity, including any class or extracurricular activity, on the basis of such student's pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery therefrom, unless the student requests voluntarily to participate in a separate portion of the program or activity of the recipient.

(2) A recipient may require such a student to obtain the certification of a physician that the student is physically and emotionally able to continue participation as long as such a certification is required of all students for other physical or emotional conditions requiring the attention of a physician.

(3) A recipient that operates a portion of its education program or activity separately for pregnant students, admittance to which is completely voluntary on the part of the student as provided in paragraph (b)(1) of this section, shall ensure that the separate portion is comparable to that offered to non-pregnant students.

(4) Subject to § 41.235(d), a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom in the same manner and under the same policies as any other temporary disability with respect to any medical or hospital benefit, service, plan, or policy that such recipient administers, operates, offers, or participates in with respect to students admitted to the recipient's educational program or activity.

(5) In the case of a recipient that does not maintain a leave policy for its students, or in the case of a student who does not otherwise qualify for leave under such a policy, a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy, and recovery therefrom as a justification for a leave of absence for as long a period of time as is deemed medically necessary by the student's physician, at the conclusion of which the student shall be reinstated to the status that she held when the leave began.

§ 41.450 Athletics.

(a) *General.* No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person, or otherwise be discriminated against in any interscholastic, intercollegiate, club, or intramural athletics offered by a recipient, and no recipient shall provide any such athletics separately on such basis.

(b) *Separate teams.* Notwithstanding the requirements of paragraph (a) of this section, a recipient may operate or sponsor separate teams for members of each sex where selection for such teams is based upon competitive skill or the activity involved is a contact sport. However, where a recipient operates or sponsors a team in a particular sport for members of one sex but operates or sponsors no such team for members of the other sex, and athletic opportunities for members of that sex have previously been limited, members of the excluded sex must be allowed to try out for the team offered unless the sport involved is a contact sport. For the purposes of these Title IX regulations, contact sports include boxing, wrestling, rugby, ice hockey, football, basketball, and other sports the purpose or major activity of which involves bodily contact.

(c) *Equal opportunity.* (1) A recipient that operates or sponsors interscholastic, intercollegiate, club, or intramural athletics shall provide equal athletic opportunity for members of both sexes. In determining whether equal opportunities are available, the designated agency official will consider, among other factors:

(i) Whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes;

(ii) The provision of equipment and supplies;

(iii) Scheduling of games and practice time;

(iv) Travel and per diem allowance;

(v) Opportunity to receive coaching and academic tutoring;

(vi) Assignment and compensation of coaches and tutors;

(vii) Provision of locker rooms, practice, and competitive facilities;

(viii) Provision of medical and training facilities and services;

(ix) Provision of housing and dining facilities and services;

(x) Publicity.

(2) For purposes of paragraph (c)(1) of this section, unequal aggregate expenditures for members of each sex or unequal expenditures for male and female teams if a recipient operates or sponsors separate teams will not constitute noncompliance with this section, but the designated agency official may consider the failure to provide necessary funds for teams for one sex in assessing equality of opportunity for members of each sex.

(d) *Adjustment period.* A recipient that operates or sponsors interscholastic, intercollegiate, club, or intramural athletics at the elementary school level shall comply fully with this section as expeditiously as possible but in no event later than one year from September 29, 2000. A recipient that operates or sponsors interscholastic, intercollegiate, club, or intramural athletics at the secondary or postsecondary school level shall comply fully with this section as expeditiously as possible but in no event later than three years from September 29, 2000.

§ 41.455 Textbooks and curricular material.

Nothing in these Title IX regulations shall be interpreted as requiring or prohibiting or abridging in any way the use of particular textbooks or curricular materials.

Subpart E—Discrimination on the Basis of Sex in Employment in Education Programs or Activities Prohibited

§ 41.500 Employment.

(a) *General.* (1) No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination in employment, or recruitment, consideration, or selection therefor, whether full-time or part-time, under any education program or activity operated by a recipient that receives Federal financial assistance.

(2) A recipient shall make all employment decisions in any education program or activity operated by such recipient in a nondiscriminatory manner and shall not limit, segregate, or classify applicants or employees in any way that could adversely affect any applicant's or employee's employment opportunities or status because of sex.

(3) A recipient shall not enter into any contractual or other relationship which directly or indirectly has the effect of subjecting employees or students to discrimination prohibited by §§ 41.500 through 41.550, including relationships with employment and referral agencies, with labor unions, and with organizations providing or administering fringe benefits to employees of the recipient.

(4) A recipient shall not grant preferences to applicants for employment on the basis of attendance at any educational institution or entity that admits as students only or predominantly members of one sex, if the giving of such preferences has the effect of discriminating on the basis of sex in violation of these Title IX regulations.

(b) *Application.* The provisions of §§ 41.500 through 41.550 apply to:

(1) Recruitment, advertising, and the process of application for employment;

(2) Hiring, upgrading, promotion, consideration for and award of tenure, demotion, transfer, layoff, termination, application of nepotism policies, right of return from layoff, and rehiring;

(3) Rates of pay or any other form of compensation, and changes in compensation;

(4) Job assignments, classifications, and structure, including position descriptions, lines of progression, and seniority lists;

(5) The terms of any collective bargaining agreement;

(6) Granting and return from leaves of absence, leave for pregnancy, childbirth, false pregnancy, termination of pregnancy, leave for persons of either sex to care for children or dependents, or any other leave;

(7) Fringe benefits available by virtue of employment, whether or not administered by the recipient;

(8) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, selection for tuition assistance, selection for sabbaticals and leaves of absence to pursue training;

(9) Employer-sponsored activities, including social or recreational programs; and

(10) Any other term, condition, or privilege of employment.

§ 41.505 Employment criteria.

A recipient shall not administer or operate any test or other criterion for any employment opportunity that has a disproportionately adverse effect on persons on the basis of sex unless:

(a) Use of such test or other criterion is shown to predict validly successful performance in the position in question; and

(b) Alternative tests or criteria for such purpose, which do not have such disproportionately adverse effect, are shown to be unavailable.

§ 41.510 Recruitment.

(a) *Nondiscriminatory recruitment and hiring.* A recipient shall not discriminate on the basis of sex in the recruitment and hiring of employees. Where a recipient has been found to be presently discriminating on the basis of sex in the recruitment or hiring of employees, or has been found to have so discriminated in the past, the recipient shall recruit members of the sex so discriminated against so as to overcome the effects of such past or present discrimination.

(b) *Recruitment patterns.* A recipient shall not recruit primarily or exclusively at entities that furnish as applicants only or predominantly members of one sex if such actions have the effect of discriminating on the basis of sex in violation of §§ 41.500 through 41.550.

§ 41.515 Compensation.

A recipient shall not make or enforce any policy or practice that, on the basis of sex:

(a) Makes distinctions in rates of pay or other compensation;

(b) Results in the payment of wages to employees of one sex at a rate less than that paid to employees of the opposite sex for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and that are performed under similar working conditions.

§ 41.520 Job classification and structure.

A recipient shall not:

(a) Classify a job as being for males or for females;

(b) Maintain or establish separate lines of progression, seniority lists, career ladders, or tenure systems based on sex; or

(c) Maintain or establish separate lines of progression, seniority systems, career ladders, or tenure systems for similar jobs, position descriptions, or job requirements that classify persons on the basis of sex, unless sex is a bona fide occupational qualification for the positions in question as set forth in § 41.550.

§ 41.525 Fringe benefits.

(a) "*Fringe benefits*" *defined.* For purposes of these Title IX regulations, *fringe benefits* means: Any medical, hospital, accident, life insurance, or retirement benefit, service, policy or plan, any profit-sharing or bonus plan, leave, and any other benefit or service

of employment not subject to the provision of § 41.515.

(b) *Prohibitions.* A recipient shall not:

(1) Discriminate on the basis of sex with regard to making fringe benefits available to employees or make fringe benefits available to spouses, families, or dependents of employees differently upon the basis of the employee's sex;

(2) Administer, operate, offer, or participate in a fringe benefit plan that does not provide for equal periodic benefits for members of each sex and for equal contributions to the plan by such recipient for members of each sex; or

(3) Administer, operate, offer, or participate in a pension or retirement plan that establishes different optional or compulsory retirement ages based on sex or that otherwise discriminates in benefits on the basis of sex.

§ 41.530 Marital or parental status.

(a) *General.* A recipient shall not apply any policy or take any employment action:

(1) Concerning the potential marital, parental, or family status of an employee or applicant for employment that treats persons differently on the basis of sex; or

(2) Which is based upon whether an employee or applicant for employment is the head of household or principal wage earner in such employee's or applicant's family unit.

(b) *Pregnancy.* A recipient shall not discriminate against or exclude from employment any employee or applicant for employment on the basis of pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery therefrom.

(c) *Pregnancy as a temporary disability.* Subject to § 41.235(d), a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy, recovery therefrom, and any temporary disability resulting therefrom as any other temporary disability for all job-related purposes, including commencement, duration, and extensions of leave, payment of disability income, accrual of seniority and any other benefit or service, and reinstatement, and under any fringe benefit offered to employees by virtue of employment.

(d) *Pregnancy leave.* In the case of a recipient that does not maintain a leave policy for its employees, or in the case of an employee with insufficient leave or accrued employment time to qualify for leave under such a policy, a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy, and recovery therefrom as a justification for a leave of absence without pay for a reasonable period of time, at the conclusion of which the employee shall be reinstated to the status that she held when the leave began or to a comparable position, without decrease in rate of compensation or loss of promotional opportunities, or any other right or privilege of employment.

§ 41.535 Effect of state or local law or other requirements.

(a) *Prohibitory requirements.* The obligation to comply with §§ 41.500 through 41.550 is not obviated or alleviated by the existence of any State or local law or other requirement that imposes prohibitions or limits upon employment of members of one sex that are not imposed upon members of the other sex.

(b) *Benefits.* A recipient that provides any compensation, service, or benefit to members of one sex pursuant to a State or local law or other requirement shall provide the same compensation, service, or benefit to members of the other sex.

§ 41.540 Advertising.

A recipient shall not in any advertising related to employment indicate preference, limitation, specification, or discrimination based on sex unless sex is a bona fide occupational qualification for the particular job in question.

§ 41.545 Pre-employment inquiries.

(a) *Marital status.* A recipient shall not make pre-employment inquiry as to the marital status of an applicant for employment, including whether such applicant is "Miss" or "Mrs."

(b) *Sex.* A recipient may make pre-employment inquiry as to the sex of an applicant for employment, but only if such inquiry is made equally of such applicants of both sexes and if the results of such inquiry are not used in connection with discrimination prohibited by these Title IX regulations.

§ 41.550 Sex as a bona fide occupational qualification.

A recipient may take action otherwise prohibited by §§ 41.500 through 41.550 provided it is shown that sex is a bona fide occupational qualification for that action, such that consideration of sex with regard to such action is essential to successful operation of the employment function concerned. A recipient shall not take action pursuant to this section that is based upon alleged comparative employment characteristics or stereotyped characterizations of one or the other sex, or upon preference based on sex of the recipient, employees, students, or other persons, but nothing contained in this section shall prevent a recipient from considering an employee's sex in relation to employment in a locker room or toilet facility used only by members of one sex.

Subpart F—Procedures

§41.600 Notice of covered programs.

Within 60 days of September 29, 2000, each Federal agency that awards Federal financial assistance shall publish in the FEDERAL REGISTER a notice of the programs covered by these Title IX regulations. Each such Federal agency shall periodically republish the notice of covered programs to reflect changes in covered programs. Copies of this notice also shall be made available upon request to the Federal agency's office that enforces Title IX.

§ 41.605 Enforcement procedures.

The investigative, compliance, and enforcement procedural provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) ("Title VI") are hereby adopted and applied to these Title IX regulations. These procedures may be found at 10 CFR 4.21 through 4.75.

[65 FR 52892, Aug. 30, 2000]

PART 42—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Sec.

Subpart A—General

Subpart B—Covered Transactions

Subpart C—Responsibilities of Participants Regarding Transactions

DOING BUSINESS WITH OTHER PERSONS

Federal Register

Wednesday,
August 16, 2000

Part V

The President

Executive Order 13166—Improving Access to Services for Persons With Limited English Proficiency

Department of Justice

Enforcement of Title VI of the Civil Rights Act of 1964—National Origin Discrimination Against Persons With Limited English Proficiency; Notice

Federal Register
Vol. 65, No. 159
Wednesday, August 16, 2000

Presidential Documents

Title 3—

The President

Executive Order 13166 of August 11, 2000

Improving Access to Services for Persons With Limited English Proficiency

By the authority vested in me as President by the Constitution and the laws of the United States of America, and to improve access to federally conducted and federally assisted programs and activities for persons who, as a result of national origin, are limited in their English proficiency (LEP), it is hereby ordered as follows:

Section 1. *Goals.*

The Federal Government provides and funds an array of services that can be made accessible to otherwise eligible persons who are not proficient in the English language. The Federal Government is committed to improving the accessibility of these services to eligible LEP persons, a goal that reinforces its equally important commitment to promoting programs and activities designed to help individuals learn English. To this end, each Federal agency shall examine the services it provides and develop and implement a system by which LEP persons can meaningfully access those services consistent with, and without unduly burdening, the fundamental mission of the agency. Each Federal agency shall also work to ensure that recipients of Federal financial assistance (recipients) provide meaningful access to their LEP applicants and beneficiaries. To assist the agencies with this endeavor, the Department of Justice has today issued a general guidance document (LEP Guidance), which sets forth the compliance standards that recipients must follow to ensure that the programs and activities they normally provide in English are accessible to LEP persons and thus do not discriminate on the basis of national origin in violation of title VI of the Civil Rights Act of 1964, as amended, and its implementing regulations. As described in the LEP Guidance, recipients must take reasonable steps to ensure meaningful access to their programs and activities by LEP persons.

Sec. 2. *Federally Conducted Programs and Activities.*

Each Federal agency shall prepare a plan to improve access to its federally conducted programs and activities by eligible LEP persons. Each plan shall be consistent with the standards set forth in the LEP Guidance, and shall include the steps the agency will take to ensure that eligible LEP persons can meaningfully access the agency's programs and activities. Agencies shall develop and begin to implement these plans within 120 days of the date of this order, and shall send copies of their plans to the Department of Justice, which shall serve as the central repository of the agencies' plans.

Sec. 3. *Federally Assisted Programs and Activities.*

Each agency providing Federal financial assistance shall draft title VI guidance specifically tailored to its recipients that is consistent with the LEP Guidance issued by the Department of Justice. This agency-specific guidance shall detail how the general standards established in the LEP Guidance will be applied to the agency's recipients. The agency-specific guidance shall take into account the types of services provided by the recipients, the individuals served by the recipients, and other factors set out in the LEP Guidance. Agencies that already have developed title VI guidance that the Department of Justice determines is consistent with the LEP Guidance shall examine their existing guidance, as well as their programs and activities, to determine if additional guidance is necessary to comply with this order. The Department of Justice shall consult with the agencies in creating their guidance and, within 120 days of the date of this order,

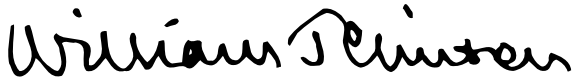
each agency shall submit its specific guidance to the Department of Justice for review and approval. Following approval by the Department of Justice, each agency shall publish its guidance document in the **Federal Register** for public comment.

Sec. 4. *Consultations.*

In carrying out this order, agencies shall ensure that stakeholders, such as LEP persons and their representative organizations, recipients, and other appropriate individuals or entities, have an adequate opportunity to provide input. Agencies will evaluate the particular needs of the LEP persons they and their recipients serve and the burdens of compliance on the agency and its recipients. This input from stakeholders will assist the agencies in developing an approach to ensuring meaningful access by LEP persons that is practical and effective, fiscally responsible, responsive to the particular circumstances of each agency, and can be readily implemented.

Sec. 5. *Judicial Review.*

This order is intended only to improve the internal management of the executive branch and does not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers or employees, or any person.



THE WHITE HOUSE,
August 11, 2000.

[FR Doc. 00–20938
Filed 8–15–00; 8:45 am]
Billing code 3195–01–P

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. 12250 [1] 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 Education [3] 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 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 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

[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.

[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.''

[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 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.

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[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.

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.

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)*__. He/She will outline the next stops 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 of 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: _____

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

Missouri Department of Labor and Industrial Relations is an equal opportunity employer/program.

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, timeclocks, 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

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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.

This form was electronically produced by Elite Federal Forms, Inc.

DI-2010
June 1995
(This form replaces DI-1953, DI-1954, DI-1955, DI-1956 and DI-1963)

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

GENERAL CONDITIONS
FOR FEDERALLY FUNDED/ASSISTED CONSTRUCTION PROJECTS

1. These General Conditions for Federally Funded/Assisted Construction Projects (GCFFAC) must be physically incorporated in each construction contract funded by the Land and Water Conservation Fund in Missouri. The contractor (or subcontractor) must insert this document in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services).The applicable requirements of the GCFFAC are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

GCFFAC must be included in all contracts to be paid using federal assistance, and in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services). The contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies must physically incorporate the GCFFAC in bid proposal or request for proposal documents, and the GCFFAC must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and Department of Natural Resources.

1.0 Notice of Federal Funding

This project is being performed in whole or in part using federal funds. Therefore, all work or services performed by the Contractor and its subcontractors shall be subject to the terms and conditions set forth below in addition to all terms and conditions in the Construction Contract, General Conditions, and other contract documents. The concepts, rules, and guidelines set forth in 2 C.F.R. 200 describing allowable costs and administrative requirements apply.

2.0 Definitions

As used herein, “Federal Government” means the government of the United States of America. “Federal Agency” means an agency, entity, department or division of the Federal Government that is providing funding for this project. All other terms shall have the meanings established in the Construction Contract, General Conditions, and/or Project Manual, unless such definitions conflict with a definition provided in an applicable statute or regulation.

3.0 Conflicting Terms or Conditions

To the extent that any terms or conditions set forth herein conflict with the Construction Contract or its General Conditions, the more stringent of the two terms and conditions shall govern.

4.0 No Obligation by Federal Government

The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, Contractor, or any other party pertaining to any matter resulting from the contract.

5.0 Compliance with Federal Laws, Regulations and Executive Orders

The Contractor and its subcontractors and suppliers are required to comply with all applicable Federal laws, regulations, and executive orders, regardless of whether set forth herein. The Contractor shall assist and enable the State of Missouri in complying with any requirements imposed by the Federal Agency as a condition of funding.

6.0 Compliance with Civil Rights Provisions

The Contractor shall comply with all Federal statutes, executive orders, and regulations relating to nondiscrimination. These include, but are not limited to the following:

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;

Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex;

Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps;

The Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age;

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;

Title VII of the Civil Rights Act of 1964 (42 U.S.C. part 2000(e), which prohibits discrimination against employees on the basis of religion;

Any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and

The requirements of any other nondiscrimination statute(s) that may apply to the application.

7.0 Equal Employment Opportunity (41 C.F.R. 60-1.4(b)).

During the performance of this contract, the Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during

employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicants or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

(4) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided*, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and sub contractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and sub contractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

8.0 Notice of Requirement for Affirmative Action To Ensure Equal Employment Opportunity (Executive Order 11246**,** 41 C.F.R. 60-4.2)

(1) The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Specifications" set forth herein.

(2) The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

Time-tables	**Goals for minority participation for each trade**	**Goals for female participation in each trade**

Insert Goals Established by U.S. Department of Labor: available at https://www.dol.gov/sites/dolgov/files/ofccp/ParticipationGoals.pdf.

These goals are applicable to all the Contractor's construction work (whether or not it is Federal or federally assisted) performed in the covered area. If the contractor performs construction work in a

geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the contractor also is subject to the goals for both its federally involved and nonfederally involved construction.

The Contractor's compliance with the Executive Order and the regulations in 41 C.F.R. pt. 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 C.F.R. 60-4.3(a), and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 C.F.R. pt. 60-4. Compliance with the goals will be measured against the total work hours performed.

(3) The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of $10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the subcontractor; employer identification number of the subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed.

(4) As used in this Notice, and in the contract resulting from this solicitation, the “covered area” is (insert description of the geographical areas where the contract is to be performed giving the state, county and city, if any).

9.0 Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246 - 41 C.F.R. 60-4.3)

(1) As used in these specifications:

a. “Covered area” means the geographical area described in the solicitation from which this contract resulted;

b. “Director” means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;

c. “Employer identification number” means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.

d. “Minority” includes:

(i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);

(ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);

(iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and

(iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

(2) Whenever the Contractor, or any subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of $10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.

(3) If the Contractor is participating (pursuant to 41 C.F.R. 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each contractor or subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other contractors or subcontractors toward a goal in an approved Plan does not excuse any covered contractor's or subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

(4) The Contractor shall implement the specific affirmative action standards provided in paragraphs 7 a through p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered Construction contractors performing construction work in geographical areas where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the FEDERAL REGISTER in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

(5) Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.

(6) In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

(7) The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where

possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.

d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7b above.

f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other contractors and subcontractors with whom the Contractor does or anticipates doing business.

i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one

month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's work force.

k. Validate all tests and other selection requirements where there is an obligation to do so under 41 C.F.R. pt. 60-3.

l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.

n. Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

(8) Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these Specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

(9) A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).

(10) The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, sexual orientation, gender identity, or national origin.

(11) The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

(12) The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

(13) The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 C.F.R. 60-4.8.

(14) The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

(15) Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

10.0 Prohibition of Segregated Facilities

(1) The Contractor agrees that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The Contractor agrees that a breach of this clause is a violation of the Equal Employment Opportunity clause in this contract.

(2) "Segregated facilities," as used in this clause, means any waiting rooms, work areas, rest rooms and wash rooms, 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 that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, or national origin because of written or oral policies or employee custom. The term does not include separate or single-user rest rooms or necessary dressing or sleeping areas provided to assure privacy between the sexes.

(3) The Contractor shall include this clause in every subcontract and purchase order that is subject to the Equal Employment Opportunity clause of this contract.

11.0 Davis-Bacon Act (40 U.S.C. §§ 3141-3144, and §§ 3146-3148, and 29 C.F.R. pt. 5)

(The requirements of the Davis-Bacon Act and this section are not applicable to projects funded by the Land and Water Conservation Fund.)

(1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 C.F.R. pt. 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis–Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided*, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis–Bacon poster (WH–1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including

the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30–day period that additional time is necessary.

(C) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30–day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided*, That the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis–Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding. The (write in name of Federal Agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to Davis–Bacon prevailing wage requirements, which is held by the same prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the (Agency) may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social

security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis–Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 C.F.R. 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis–Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the (write in name of appropriate federal agency) if the agency is a party to the contract, but if the agency is not such a party, the Contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency). The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 C.F.R. 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH–347 is available for this purpose from the Wage and Hour Division Web site at http://www.dol.gov/esa/whd/forms/wh347instr.htm or its successor site. The prime Contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the (write in name of appropriate federal agency) if the agency is a party to the contract, but if the agency is not such a party, the Contractor will submit them to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency), the Contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime Contractor to require a subcontractor to provide addresses and social security numbers to the prime Contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 C.F.R. pt. 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 C.F.R. pt. 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 C.F.R. pt. 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH–347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The Contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the (write the name of the agency) or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the Federal Agency may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 C.F.R. 5.12.

(4) Apprentices and trainees—

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the Contractor will no

longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 C.F.R. 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 C.F.R. pt. 30.

(5) Compliance with Copeland Act requirements. The Contractor shall comply with the requirements of 29 C.F.R. pt. 3, which are incorporated by reference in this contract.

(6) Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 C.F.R. 5.5(a)(1) through (10) and such other clauses as the (write in the name of the Federal Agency) may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 C.F.R. 5.5.

(7) Contract termination: debarment. A breach of the contract clauses in 29 C.F.R. 5.5 may be grounds for termination of the contract, and for debarment as a Contractor and a subcontractor as provided in 29 C.F.R. 5.12.

(8) Compliance with Davis–Bacon and Related Act requirements. All rulings and interpretations of the Davis–Bacon and Related Acts contained in 29 C.F.R. pts. 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 C.F.R. pt.s 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of

its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis–Bacon Act or 29 C.F.R. 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis–Bacon Act or 29 C.F.R. 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. § 1001.

11.0 Copeland "Anti-Kickback" Act

(1) The Contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract. The Contractor and subcontractors are prohibited from inducing, by any means, any person employed on the project to give up any part of the compensation to which the employee is entitled.

(2) The Contractor or subcontractor shall insert in any subcontracts the clause above, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

(3) A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a Contractor and subcontractor as provided in 29 C.F.R. 5.12.

12.0 Contract Work Hours and Safety Standards Act (40 U.S.C. 3701 to 3708, 29 C.F.R. 5.5)

(1) Overtime requirements. No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of $27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The Owner shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be

withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

13.0 Suspension and Debarment (Executive Orders 12549 and 12689, 2 C.F.R. pt. 180)

(1) A contract award (see 2 C.F.R. 180.220) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. 180 that implement Executive Orders 12549 (3 C.F.R. pt. 1986 Comp., p. 189) and 12689 (3 C.F.R. pt. 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

(2) The contractor is required to verify that none of the contractor's principals (defined at 2 C.F.R. 180.995) or its affiliates (defined at 2 C.F.R. 180.905) are excluded (defined at 2 C.F.R. 180.940) or disqualified (defined at 2 C.F.R. 180.935).

(3) The contractor must comply with 2 C.F.R. pt. 180, subpart C and the regulations of the granting Federal Agency regarding suspension and debarment, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

(4) This certification is a material representation of fact relied upon by the Owner. If it is later determined that the Contractor did not comply with 2 C.F.R. pt. 180, subpart C in addition to remedies available to the Owner, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

(5) By submitting a bid, the bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

14.0 Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352)

(1) Contractors that apply or bid for an award exceeding $100,000 agree to file the required certification (set forth below), in compliance with 31 U.S.C. § 1352 (as amended).

(2) Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352.

(3) Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

CERTIFICATION REGARDING LOBBYING

The Bidder or Offeror certifies by signing and submitting this bid or proposal, 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, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal 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 and disclose 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.

15.0 Procurement of Recovered Materials

The Contractor shall comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (42 U.S.C. § 6962). The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired during the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

Information about this requirement, along with the list of EPA designated items, is available at EPA's Comprehensive Procurement Guidelines web site, https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program.

16.0 Fair Labor Standards Act

All contracts and subcontracts that result from this solicitation incorporate by reference the provisions of 29 C.F.R. pt. 201, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part-time workers. The Contractor has full responsibility to monitor compliance to the referenced statute or regulation. The Contractor must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.

17.0 Access to Records and Reports

The Contractor must maintain an acceptable cost accounting system. The Contractor agrees to provide the Owner, the Federal Agency and the Comptroller General of the United States or any of their duly authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpts and transcriptions. The Contractor agrees to maintain all books, records and reports required under this contract for a period of not less than three years after final payment is made and all pending matters are closed.

18.0 Occupational Health and Safety Act

All contracts and subcontracts that result from this solicitation incorporate by reference the requirements of 29 C.F.R. pt. 1910 with the same force and effect as if given in full text. The employer must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The employer retains full responsibility to monitor its compliance and their subcontractor's compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (20 C.F.R. pt. 1910). The employer must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

19.0 Rights to Inventions

Contracts or agreements that include the performance of experimental, developmental, or research work must provide for the rights of the Federal Government and the Owner in any resulting invention as established by 37 C.F.R. pt. 401, Rights to Inventions Made by Non-profit Organizations and Small Business Firms under Government Grants, Contracts, and Cooperative Agreements. This contract incorporates by reference the patent and inventions rights as specified within 37 C.F.R. 401.14. Contractor must include this requirement in all sub-tier contracts involving experimental, developmental, or research work.

20.0 Energy Conservation

The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. § 6201et seq.).

21.0 Clean Air Act and Federal Water Pollution Control Act

(1) If the amount of the Contract exceeds $150,000, the Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq. and the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 et seq.

(2) The Contractor agrees to report each violation to the Owner, and understands and agrees that the Owner will, in turn, report each violation as required to assure notification to the Federal Agency and the appropriate Environmental Protection Agency Regional Office.

(3) The Contractor agrees to include these requirements in each subcontract exceeding $150,000 financed in whole or in part with Federal assistance.

22.0 Contractor Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights

(1) This contract and employees working on this contract will be subject to the whistleblower rights and remedies in the pilot program on contractor employee whistleblower protections established at 41 U.S.C. § 4712 by section 828 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239) and FAR 3.908.

(2) The Contractor shall inform its employees in writing, in the predominant language of the workforce, of employee whistleblower rights and protections under 41 U.S.C. § 4712, as described in section 3.908 of the Federal Acquisition Regulation.

(3) The Contractor shall insert the substance of this clause, including this paragraph (c), in all subcontracts over the simplified acquisition threshold.

23.0 Veteran's Preference

In the employment of labor (excluding executive, administrative, and supervisory positions), the Contractor and all sub-tier contractors must give preference to covered veterans as defined within Title 49 United States Code Section 47112. Covered veterans include Vietnam-era veterans, Persian Gulf veterans, Afghanistan-Iraq war veterans, disabled veterans, and small business concerns (as defined by 15 U.S.C. § 632) owned and controlled by disabled veterans. This preference only applies when there are covered veterans readily available and qualified to perform the work to which the employment relates.

24.0 Drug Free Workplace Act

The Contractor shall provide a drug free workplace in accordance with the Drug Free Workplace Act of 1988, 41 U.S.C. Chapter 81, and all applicable regulations. The Contractor shall report any conviction of the Contractor's personnel under a criminal drug statute for violations occurring on the Contractor's premises or off the Contractor's premises while conducting official business. A report of a conviction shall be made to the state agency within five (5) working days after the conviction.

25.0 Access Requirements for Persons with Disabilities

Contractor shall comply with 49 U.S.C. § 5301(d), stating Federal policy that the elderly and persons with disabilities have the same rights as other persons to use mass transportation services and facilities and that special efforts shall be made in planning and designing those services and facilities to implement that policy. Contractor shall also comply with all applicable requirements of Sec. 504 of the Rehabilitation Act (1973), as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of handicaps, and the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. § 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments thereto.

26.0 Seismic Safety

The Contractor agrees to ensure that all work performed under this contract, including work performed by subcontractors, conforms to a building code standard that provides a level of seismic safety substantially equivalent to standards established by the National Earthquake Hazards Reduction Guidelines for Contract Provisions for Obligated Sponsors and Airport Improvement Program Projects Issued on June 19, 2018 Page 61 Program (NEHRP). Local building codes that model their code after the current version of the International Building Code (IBC) meet the NEHRP equivalency level for seismic safety.

27.0 Domestic Preference for Procurements

As appropriate and to the extent consistent with law, the Contractor should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this contract. For purposes of this section:

(1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(2) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

28.0 Prohibition on Certain Telecommunication and Video Surveillances Services or Equipment (Pub. L. 115-232, Section 889)

Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of a Federal executive agency and recipients or subrecipients of funds from such agencies from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons. Pursuant to such provisions, the Contractor understands and agrees that the Contractor and its subcontractors shall not obligate or expend loan or grant funds from the Federal Agency under this Contract to:

(1) Procure or obtain;

(2) Extend or renew a contract to procure or obtain; or

(3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses 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.

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 (000) 000 - 0000	
ADDRESS	CITY	STATE	ZIP CODE	
UNIQUE IDENTIFIER (DUNS NUMBER)	PROJECT NUMBER	BUDGET PERIOD	PROJECT PERIOD	
RECIPIENT PROJECT MANAGER NAME	RECIPIENT PROJECT EMAIL ADDRESS	PROJECT MANAGER TELEPHONE NUMBER WITH AREA CODE (000) 000 - 0000		

PROJECT INFORMATION

RECIPIENT PROJECT TITLE AND PROJECT DESCRIPTION (ATTACH ADDITIONAL PAGES AS NECESSARY)

TYPE OF ASSISTANCE	SOURCE OF FUNDING	CFDA NUMBER	CFDA NAME
New Award ☐ Amendment ☐	Federal ☐ State ☐ Other ☐		

STATE PROJECT MANAGER NAME	STATE PROJECT MANAGER TELEPHONE NUMBER WITH AREA CODE (000) 000 - 0000	INDIRECT COST RATE FOR RECIPIENT %

RESEARCH AND DEVELOPMENT	RESEARCH AND DEVELOPMENT COMMENTS IF NEEDED
YES ☐ NO ☐	

PROJECT FUNDING	Original Amount	Original Percentage	Amended Amount	Amended Percentage	Total Amount	Total Percentage
Federal Award:	$	%	$	%	$ 0.00	%
State/Other Award:	$	%	$	%	$ 0.00	%
Recipient Match:	$	%	$	%	$ 0.00	%
Total Award:	$ 0.00	%	$ 0.00	%	$ 0.00	%

AGREEMENT ADMINISTRATION

THE RECIPIENT AGREES TO ADMINISTER THIS AGREEMENT IN ACCORDANCE WITH ALL APPLICABLE FEDERAL AND STATE REGULATIONS INCLUDING, BUT NOT LIMITED TO:

APPLICABLE PROGRAM GUIDELINES	RECIPIENT APPLICATION, AS NEGOTIATED, DATED
0	

BUDGET PLAN	DETAILED SCOPE OF WORK	SPECIAL CONDITIONS	GENERAL TERMS AND CONDITIONS	SUSPENSION/DEBARMENT	PUBLIC LAW
Attachment # _____	Attachment # _____	Attachment # _____	Attachment # _____	Attachment # _____	Attachment # _____

PUBLICATIONS	EPA MBE/WBE UTILIZATION	CERTIFICATE REGARDING LOBBYING	INVOICE	ADDITIONAL ATTACHMENTS	
Attachment # _____	Attachment # _____	Attachment # _____	Attachment # _____	Attachment # _____	Attachment # _____

AMENDMENT INFORMATION

AMENDMENT ID	AMENDMENT DESCRIPTION (ATTACH ADDITIONAL PAGES AS NECESSARY)

FEDERAL AWARD INFORMATION (ATTACH ADDITIONAL PAGES AS NECESSARY)

FEDERAL AWARD PROJECT TITLE AND DESCRIPTION

FEDERAL AWARDING 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
		$	%

APPROVAL

DEPARTMENT OF NATURAL RESOURCES DIRECTOR OR DESIGNEE NAME (TYPED)	SIGNATURE	DATE

RECIPIENT ORGANIZATION AUTHORIZED OFFICIAL NAME AND TITLE (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: mspgrants@dnr.mo.gov

PROJECT SPONSOR

NAME	PROJECT NUMBER

PROJECT TITLE	CONSTRUCTION START DATE

QUARTERLY PERIOD YEAR ❑ JAN. - MARCH DUE APRIL 30TH ❑ APRIL - JUNE DUE JULY 31ST ❑ JULY - SEPT. DUE OCT. 31ST ❑ OCT. - DEC. DUE JAN. 31ST 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 ❑ AHEAD OF SCHEDULE ❑ BEHIND SCHEDULE ❑ ON SCHEDULE

ISSUES (EXPLAIN)

PROGRESS: (State project scope elements begun and/or completed.)

GOALS: (Explain what remains to be done.)

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

GMS USE ONLY

PERIOD OF PERFORMANCE	FBMS NUMBER

GMS REVIEWER	DAS REVIEWER

MISSOURI DEPARTMENT OF NATURAL RESOURCES
DIVISION OF STATE PARKS

LAND AND WATER CONSERVATION FUND CFDA 15.916
EXTENSION REQUEST

PLEASE EMAIL REQUESTS TO mspgrants@dnr.mo.gov

PROJECT SPONSOR

NAME

PROJECT NUMBER

PROJECT TITLE

PROJECT SCOPE

PROJECT PERIOD START DATE TO END DATE

DATE OF REQUEST

REASON FOR EXTENSION

❑ WEATHER/NATURAL DISASTER

❑ MATERIALS/SUPPLY ISSUES

❑ CHANGES IN STAFF/PERSONNEL

❑ OTHER (EXPLAIN) _____

PROJECT PROGRESS

PERCENTAGE OF COMPLETION TO DATE

EXPECTED COMPLETION DATE:
(Must be within one year of project period end date)

EXPLANATION OF WHAT STILL NEEDS TO BE DONE

CONTACT NAME

CONTACT TELEPHONE NUMBER

CONTACT EMAIL

ADDRESS

CITY

ZIP

NAME OF RESPONSIBLE OFFICIAL FOR PROJECT

FOR GMS OFFICE USE ONLY

REQUEST FOR EXTENSION IS

❑ APPROVED ❑ DENIED ❑ WILL REQUIRE ADDITIONAL INFORMATION

APPROVER

DATE APPROVED

REVISED PROJECT END DATE

COMMENTS

The Grants Management Section will contact you regarding this request.

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 ❑ FINAL ❑ 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

MISSOURI DEPARTMENT OF NATURAL RESOURCES
DIVISION OF STATE PARKS

LAND AND WATER CONSERVATION FUND CFDA 15.916 REIMBURSEMENT LOG

PROJECT NUMBER	BILLING NUMBER

PROJECT SPONSOR

NAME	TELEPHONE NUMBER

PROJECT TITLE

PROJECT PERIOD DATE TO DATE

DATE	INVOICE NUMBER	VENDOR/ EMPLOYEE NAME (Grant, in-kind or donation)	BUDGET CATEGORY/ ITEM DESCRIPTION	AMOUNT PAID	PAYMENT/ CHECK NUMBER	GRANTS MANAGEMENT STAFF
TOTAL						

MISSOURI DEPARTMENT OF NATURAL RESOURCES
DIVISION OF STATE PARKS

LAND AND WATER CONSERVATION FUND CFDA 15.916
INDIVIDUAL AND VOLUNTEER TIME RECORD

PROJECT NUMBER

EMPLOYEE'S NAME

JOB TITLE

PROJECT SPONSOR

RATE PER

PROJECT SITE

DATE

DATE	DESCRIPTION OF WORK	TIME	AMOUNT DUE
TOTAL			0

SUPERVISOR'S SIGNATURE*

DATE

EMPLOYEE'S SIGNATURE*

DATE

* Must have both signatures to be valid

MO 780-2672 (08/16)

MISSOURI DEPARTMENT OF NATURAL RESOURCES
DIVISION OF STATE PARKS

LAND AND WATER CONSERVATION FUND CFDA 15.916
EQUIPMENT USE RECORD

PROJECT NUMBER

EQUIPMENT TYPE

PROJECT SPONSOR

RATE PER

PROJECT SITE

DATE

DATE	DESCRIPTION OF WORK	TIME	DOLLAR VALUE
TOTAL			0

SUPERVISOR'S SIGNATURE*

DATE

EMPLOYEE'S SIGNATURE*

DATE

* Must have both signatures to be valid

MO 780-2671 (08/16)

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 THIS FORM WHEN YOU MAIL THE FINAL REIMBURSEMENT PACKAGE.
PLEASE EMAIL REQUESTS TO mspgrants@dnr.mo.gov

PROJECT SPONSOR

NAME	PROJECT NUMBER

PROJECT TITLE

PROJECT SCOPE

PROJECT PERIOD DATE	TO DATE	DATE THAT FINAL REIMBURSEMENT PACKAGE WAS MAILED

RESPONSIBLE OFFICIAL 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

NOTES

PLEASE IDENTIFY THREE DATES WITHIN 30 DAYS OF SUBMITTING THIS FORM THAT THE RESPONSIBLE OFFICIAL COULD ACCOMMODATE A GMS MEMBER FOR THE FINAL INSPECTION/WALK THROUGH:

DATE		
	❑ MORNING	❑ AFTERNOON
DATE		
	❑ MORNING	❑ AFTERNOON
DATE		
	❑ MORNING	❑ AFTERNOON

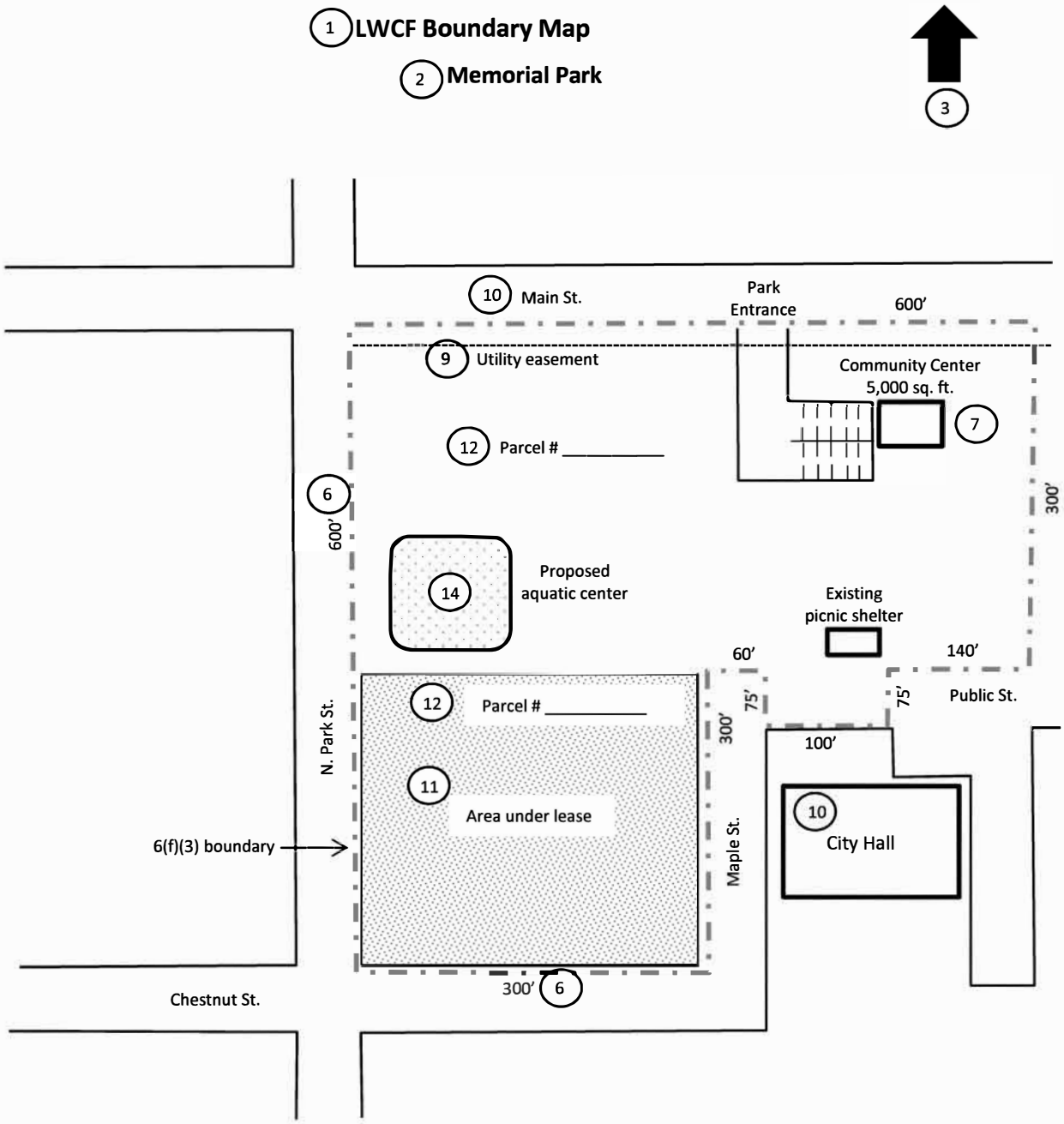
Upon receiving this request, a GMS staff member will call you to confirm a final inspection meeting.

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, with a numeric legend that corresponds to each item below on the LWCF Boundary Map Checklist. The numeric legend does not need to be reproduced on the boundary map submitted to GMS; these numbers merely serve as reference points on the sample template. Maps that do not include all of the required information outlined below will be returned to the project sponsor for necessary revision.

- ❑ 1. Title the map as "LWCF Boundary Map."
- ❑ 2. Include the name of the park, site or project.
- ❑ 3. Include a north arrow.
- ❑ 4. Provide a signature and date on the map by the individual authorized in the resolution.
- ❑ 5. Include the date of map preparation.
- ❑ 6. Clearly indicate dimensions of the project area with measurements in feet on each side to effectively illustrate the area that will be under the LWCF Act protection. The map needs to indicate entrance/access point(s).
- ❑ 7. 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 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.
- ❑ 8. 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. An example of this would be an existing parking lot that provides the sole access to a picnic area that is being 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.
- ❑ 9. If applicable, indicate any outstanding rights and interest in the area, including easements, deed/lease restrictions, reversionary interests, rights-of-way, utility corridors, etc.
- ❑ 10. Indicate adjacent street names, bodies of water and any other features that could be used as identifying landmarks.
- ❑ 11. If applicable, indicate any areas under lease with term of at least 25 years remaining on the lease.
- ❑ 12. Indicate assessor's parcel number(s).
- ❑ 13. Provide the latitude and longitude of the project entrance.
- ❑ 14. Indicate the location of the development/renovation project in relation to existing facilities, if applicable.
- ❑ 15. Convert the total square footage to acreage and indicate total acreage within the LWCF boundary. The acreage identified on the boundary map must be consistent with the acreage identified in question 12 on the application form.

Sample LWCF Boundary Map Template



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

_____ DATE_____
Signature of Project Sponsor

_____ DATE_____
Signature of Project Architect/Engineer

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.

Any act, conveyance, contract, or authorization by Owner or Transferee, whether written or oral which would cause to be used, or would permit use of, the Property contrary to the terms of this Declaration, will be deemed a violation and breach. In accordance with the terms and conditions of the LWCF award, such other use without prior approval may constitute a conversion that will require purchase of replacement property. Proposals related to any portion of the Property for a different use must be approved in advance by National Park Service. Requests may be directed to Missouri Department of Natural Resources, Division of State Parks, attn.: Grants Management.

Failure to timely identify or enforce compliance with these activity and use limitations shall not bar subsequent enforcement or be deemed a waiver of right to take action. If any provision of this Declaration is found to be unenforceable in any respect, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

IN WITNESS WHEREOF, this instrument is executed this __ day of ___, 20XX.

[Owner]

By: _____ Date: _____
[Name and Title of Authorized Signatory]

Document must be notarized in accordance with current notary laws

STATE OF MISSOURI)
)
COUNTY OF XXXX)

On this ___ day of _____, 20XX, before me personally appeared [Owner] to me personally known, who, being by me duly sworn, did say that he/she is the Owner of the Property, and that the foregoing instrument is acknowledged to be the free act and deed of the Grantor, and has been executed for the purposes stated herein.

_____ _____
Notary Public Printed Name or seal

My Commission expires: _____