

## **Appendix A. Standard Terms and Conditions**

The administrative requirements that apply to most DHS award recipients through a grant or cooperative agreement arise from two sources:

- Office of Management and Budget (OMB) Circular A-102, *Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments* (also known as the “A-102 Common Rule”), found under DHS regulations at Title 44, Code of Federal Regulations (CFR) Part 13, “Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.”
- OMB Circular A-110, *Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations*, relocated to 2 CFR Part 215.

The requirements for allowable costs/cost principles are contained in the A-102 Common Rule, OMB Circular A-110 (2 CFR § 215.27), DHS program legislation, Federal awarding agency regulations, and the terms and conditions of the award.

The four costs principles circulars are as follows:

- OMB Circular A-21, *Cost Principles for Educational Institutions*, relocated to 2 CFR Part 220.
- OMB Circular A-87, *Cost Principles for State, Local, and Indian Tribal Governments*, relocated to 2 CFR Part 225.
- OMB Circular A-122, *Cost Principles for Non-Profit Organizations*, relocated to 2 CFR Part 230.
- OMB Circular A-133, *Audits of States, Local Governments and Non-Profit Organizations*.

In addition to these cost principles, the following may also be considered additional sound guidance tools, if specifically applicable to the award and/or the award recipient(s).

- 48 CFR Part §31.2, Federal Acquisitions Regulations (FAR), *Contracts with Commercial Organizations*.
- *Improper Payments Information Act (IPIA) of 2002*, (Public Law 107-300), enacted to ensure the correct use of Federal funds and to avoid improper or erroneous payments.
- *Cash Management Improvement Act (CMIA) of 1990*, (Public Law 101-453), 31 CFR §205. In accordance with Treasury regulations, recipient shall maintain procedures to minimize the time elapsing between the transfer of funds and the disbursement of said funds (see also 44 CFR Part §13.21(i)) regarding payment of interest earned on advances.

### **Duplication of Benefits**

There may not be a duplication of any Federal assistance by governmental entities, per 2 CFR Part §225, basic Guidelines Section C.3(c), which states: Any cost allocable to a particular Federal award or cost objective under the principles provided for in this Authority may not be charged to other Federal awards to overcome fund deficiencies, to avoid restrictions imposed by law or terms of the Federal awards, or for other reasons. However, this prohibition would not preclude governmental units from shifting costs that are allowable under two or more awards in accordance with existing program agreements. Non-governmental entities are also subject to this prohibition per 2 CFR Parts §220 and §230 and 48 CFR Part §31.2.

### **Non-supplanting Requirement**

Grant funds will not replace (supplant) funds that have been budgeted for the same purpose through non-Federal sources. Applicants or grantees may be required to demonstrate and document that a reduction in non-Federal resources occurred for reasons other than the receipt of expected receipt of Federal funds.

### **Civil Rights Act of 1964**

All recipients of financial assistance will comply with the requirements of Title VI of the *Civil Rights Act of 1964* (42 U.S.C. § 2000d *et seq.*), which provides that no person in the United States will, on the grounds 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.

### **Civil Rights Act of 1968**

All recipients of financial assistance will comply with Title VIII of the *Civil Rights Act of 1968*, which prohibits recipients from discriminating in the sale, rental, financing, and advertising of dwellings, or in the provision of services in connection therewith, on the basis of race, color, national origin, religion, disability, familial status, and sex (42 U.S.C. § 3601 *et seq.*), as implemented by the Department of Housing and Urban Development at 24 CFR Part 100. The prohibition on disability discrimination includes the requirement that new multifamily housing with four or more dwelling units—*i.e.*, the public and common use areas and individual apartment units (all units in buildings with elevators and ground-floor units in buildings without elevators)—be designed and constructed with certain accessible features (see 24 CFR § 100.201).

### **Americans with Disabilities Act of 1990**

All recipients of financial assistance will comply with the requirements of Titles I, II, and III of the *Americans with Disabilities Act*, which prohibits recipients from discriminating on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12101–12213).

### **Age Discrimination Act of 1975**

All recipients of financial assistance will comply with the requirements of the *Age Discrimination Act of 1975* (42 U.S.C. § 6101 *et seq.*), which prohibits discrimination on the basis of age in any program or activity receiving Federal financial assistance.

### **Title IX of the Education Amendments of 1972 (*Equal Opportunity in Education Act*)**

All recipients of financial assistance will comply with the requirements of Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681 *et seq.*), which provides that no person in the United States will, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving Federal financial assistance. These regulations are codified at 44 CFR Part 19.

### **Rehabilitation Act of 1973**

All recipients of financial assistance will comply with the requirements of Section 504 of the *Rehabilitation Act of 1973*, 29 U.S.C. § 794, as amended, which provides that no otherwise qualified handicapped individual in the United States will, solely by reason of the handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. These requirements pertain to the provision of benefits or services as well as to employment.

### **Hatch Act**

The Hatch Act restricts the political activity of individuals principally employed by state or local executive agencies and who work in connection with programs financed in whole or in part by federal loans or grants. All recipients of financial assistance will comply with the regulations, as applicable, to States and Local Governments, of the *Hatch Act*, 5 U.S.C. § 1501-1508, as amended.

### **Limited English Proficiency (*Civil Rights Act of 1964, Title VI*)**

All recipients of financial assistance will comply with the requirements of Executive Order 13166, *Improving Access to Services for Persons with Limited English Proficiency*, and resulting agency guidance, national origin and resulting agency guidance, national origin discrimination includes discrimination on the basis of limited English proficiency (LEP). To ensure compliance with Title VI, recipients must take reasonable steps to ensure that LEP persons have meaningful access to your programs. Meaningful access may entail providing language assistance services, including oral and written translation, where necessary. Recipients are encouraged to consider the need for language services for LEP persons served or encountered both in developing budgets and in conducting programs and activities. For assistance and information regarding LEP obligations, go to <http://www.lep.gov>.

### **Animal Welfare Act of 1966**

All recipients of financial assistance will comply with the requirements of the *Animal Welfare Act*, as amended (7 U.S.C. § 2131 *et seq.*), which requires that minimum standards of care and treatment be provided for vertebrate animals bred for commercial sale, used in research, transported commercially, or exhibited to the public. Recipients must establish appropriate policies and procedures for the humane care and use of animals based on the *Guide for the Care and Use of Laboratory Animals* and comply with the *Public Health Service Policy and Government Principles Regarding the Care and Use of Animals*.

### **Clean Air Act of 1970 and Clean Water Act of 1977**

All recipients of financial assistance will comply with the requirements of 42 U.S.C. § 7401 *et seq.* and Executive Order 11738, which provides for the protection and enhancement of the quality of the nation's air resources to promote public health and welfare and for restoring and maintaining the chemical, physical, and biological integrity of the nation's waters is considered research for other purposes.

### **False Claims Act and Program Fraud Civil Remedies**

All recipients of financial assistance will comply with the requirements of 31 U.S.C. § 3729 which sets forth that no recipient of federal payments shall submit a false claim for payment. Further, 38 U.S.C. § 3801-3812 contains administrative remedies for false claims and statements made.

### **Protection of Human Subjects**

All recipients of financial assistance will comply with the requirements of the Federal regulations at 45 CFR Part 46, which requires that recipients comply with applicable provisions/law for the protection of human subjects for purposes of research. Recipients must also comply with the requirements in DHS Management Directive 026-04, *Protection of Human Subjects*, prior to implementing any work with human subjects. For purposes of 45 CFR Part 46, research means a systematic investigation, including research, development, testing, and evaluation, designed to develop or contribute to general knowledge. Activities that meet this definition constitute research for purposes of this policy, whether or not they are conducted or supported under a program that is considered research for other purposes. The regulations specify additional protections for research involving human fetuses, pregnant women, and neonates (Subpart B); prisoners (Subpart C); and children (Subpart D). The use of autopsy materials is governed by applicable State and local law and is not directly regulated by 45 CFR Part 46.

### **National Environmental Policy Act (NEPA) of 1969**

All recipients of financial assistance will comply with the requirements of the *National Environmental Policy Act (NEPA)*, as amended, 42 U.S.C. § 4331 *et seq.*, which establishes national policy goals and procedures to protect and enhance the environment, including protection against natural disasters. To comply with NEPA for its grant-supported activities, DHS requires the environmental aspects of construction grants (and certain non-construction projects as specified by the Component and awarding office) to be reviewed and evaluated before final action on the application.

### **Environmental Planning and Historic Preservation Compliance.**

DHS is required to consider the potential impacts to the human and natural environment of projects proposed for funding. DHS and applicable components, through its Environmental Planning and Historic Preservation (EHP) Program, engages in a review process to ensure that DHS-funded activities comply with various Federal laws including: *National Environmental Policy Act*, *National Historic Preservation Act*, *Endangered Species Act*, the *Clean Water Act*, and Executive Orders on Floodplains (11988), Wetlands (11990), Environmental Justice (12898). The goal of these compliance requirements is to protect our nation's water, air, coastal, wildlife, agricultural, historical, and cultural resources, as well as to minimize potential adverse effects to low-income and minority populations.

### **National Flood Insurance Act of 1968**

All recipients of financial assistance will comply with the requirements of Section 1306(c) of the *National Flood Insurance Act*, as amended, which provides for benefit payments under the Standard Flood Insurance Policy for demolition or relocation of a structure insured under the Act that is located along the shore of a lake or other body of water and that is certified by an appropriate State or local land use authority to be subject to imminent collapse or subsidence as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels. These regulations are codified at 44 CFR Part 63.

### **Flood Disaster Protection Act of 1973**

All recipients of financial assistance will comply with the requirements of the *Flood Disaster Protection Act of 1973*, as amended (42 U.S.C. § 4001 et seq.), which provides that no Federal financial assistance to acquire, modernize, or construct property may be provided in identified flood-prone communities in the United States, unless the community participates in the National Flood Insurance Program and flood insurance is purchased within one year of the identification. The flood insurance purchase requirement applies to both public and private applicants for DHS support. Lists of flood-prone areas that are eligible for flood insurance are published in the *Federal Register* by FEMA.

### **Coastal Wetlands Planning, Protection, and Restoration Act of 1990**

All recipients of financial assistance will comply with the requirements of Executive Order 11990, which provides that federally funded construction and improvements minimize the destruction, loss, or degradation of wetlands. The Executive Order provides that, in furtherance of Section 101(b)(3) of NEPA (42 U.S.C. § 4331(b)(3)), Federal agencies, to the extent permitted by law, must avoid undertaking or assisting with new construction located in wetlands unless the head of the agency finds that there is no practicable alternative to such construction, and that the proposed action includes all practicable measures to minimize harm to wetlands that may result from such use. In making this finding, the head of the agency may take into account economic, environmental, and other pertinent factors. The public disclosure requirement described above also pertains to early public review of any plans or proposals for new construction in wetlands. This is codified at 44 CFR Part 9.

### **USA Patriot Act of 2001**

All recipients of financial assistance will comply with the requirements of the *Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act* (USA PATRIOT Act), which amends 18 U.S.C. §§ 175–175c. Among other things, it prescribes criminal penalties for possession of any biological agent, toxin, or delivery system of a type or in a quantity that is not reasonably justified by a prophylactic, protective, bona fide research, or other peaceful purpose. The act also establishes restrictions on access to specified materials. “Restricted persons,” as defined by the act, may not possess, ship, transport, or receive any biological agent or toxin that is listed as a select agent.

### **Trafficking Victims Protection Act of 2000**

All recipients of financial assistance will comply with the requirements of the government-wide award term which implements Section 106(g) of the *Trafficking Victims Protection Act (TVPA) of 2000*, as amended (22 U.S.C. § 7104), located at 2 CFR Part 175. This is implemented in accordance with OMB Interim Final Guidance, *Federal Register*, Volume 72, No. 218, November 13, 2007.

In accordance with the statutory requirement, in each agency award under which funding is provided to a private entity, Section 106(g) of the TVPA, as amended, requires the agency to include a condition that authorizes the agency to terminate the award, without penalty, if the recipient or a subrecipient —

- (a) Engages in severe forms of trafficking in persons during the period of time that the award is in effect;
- (b) Procures a commercial sex act during the period of time that the award is in effect; or
- (c) Uses forced labor in the performance of the award or subawards under the award.

Full text of the award term is provided at 2 CFR § 175.15.

### **Drug-Free Workplace Regulations**

All recipients of financial assistance will comply with the requirements of the *Drug-Free Workplace Act of 1988* (41 U.S.C. § 701 *et seq.*), which requires that all organizations receiving grants from any Federal agency agree to maintain a drug-free workplace. The recipient must notify the awarding office if an employee of the recipient is convicted of violating a criminal drug statute. Failure to comply with these requirements may be cause for debarment. These regulations are codified at 2 CFR 3001. \*See also Appendix B, Certifications and Assurances\*

### **Fly America Act of 1974**

All recipients of financial assistance will comply with the requirements of the Preference for U.S. Flag Air Carriers: Travel supported by U.S. Government funds requirement, which states preference for the use of U.S. flag air carriers (air carriers holding certificates under 49 U.S.C. § 41102) for international air transportation of people and property to the extent that such service is available, in accordance with the *International Air Transportation Fair Competitive Practices Act of 1974* (49 U.S.C. § 40118) and the interpretative guidelines issued by the Comptroller General of the United States in the March 31, 1981, amendment to Comptroller General Decision B138942.

### **Lobbying Prohibitions**

None of the funds provided under an award may be expended by the recipient to pay any person to influence, or attempt 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 any Federal action concerning the award or renewal of any Federal contract, grant, loan, cooperative agreement. These lobbying prohibitions can be found at 31 U.S.C. § 1352. \*See also Appendix B, Certifications and Assurances\*

### **Debarment and Suspension**

Executive Orders 12549 and 12689 provide protection against waste, fraud and abuse by debarring or suspending those persons deemed irresponsible in their dealings with the Federal government. The recipient must certify that they are no debarred or suspended from receiving Federal assistance. For additional information, see 2 CFR Part §3000. \*See also Appendix B, Certifications and Assurances\*

### **Federal Debt Status**

The recipient may not be delinquent in the repayment of any Federal debt. Examples of relevant debt include delinquent payroll and other taxes, audit disallowances, and benefit overpayments. (See OMB Circular A-129, also refer to SF-424, item number 17 for additional information and guidance). \*See also Appendix B, Certifications and Assurances\*

### **Activities Conducted Abroad**

All recipients of financial assistance will comply with the requirements that project activities carried on outside the United States are coordinated, as necessary with appropriate government authorities and that appropriate licenses, permits, or approvals are obtained.

### **Hotel and Motel Fire Safety Act of 1990**

In accordance with Section 6 of the *Hotel and Motel Fire Safety Act of 1990*, 15 U.S.C. §2225(a), the recipient agrees to ensure that all conference, meeting, convention, or training space funded in whole or in part with Federal funds complies with the fire prevention and control guidelines of the *Federal Fire Prevention and Control Act of 1974*, 15 U.S.C. §2225.

### **Acknowledgement of Federal Funding from DHS**

All recipients of financial assistance will comply with requirements to acknowledge Federal funding when issuing statements, press releases, requests for proposals, bid invitations, and other documents describing projects or programs funded in whole or in part with Federal funds.

### **Best Practices for Collection and Use of Personally Identifiable Information (PII)**

DHS recommends that all grantees who collect PII have a publically-available privacy policy that describes what PII they collect, how they use the PII, whether they share PII with third parties, and how individuals may have their PII corrected where appropriate. Grantees may also find as a useful resource the DHS *Privacy Impact Assessments: The Privacy Office Official Guidance* and in the *Privacy Impact Assessment Template* (available on the DHS Privacy Office website at:

[http://www.dhs.gov/xlibrary/assets/privacy/privacy\\_pia\\_guidance\\_june2010.pdf](http://www.dhs.gov/xlibrary/assets/privacy/privacy_pia_guidance_june2010.pdf) and

[http://www.dhs.gov/xlibrary/assets/privacy/privacy\\_pia\\_template.pdf](http://www.dhs.gov/xlibrary/assets/privacy/privacy_pia_template.pdf), respectively.

## **Copyright**

All recipients of financial assistance will comply with requirements that publications or other exercise of copyright for any work first produced under Federal financial assistance awards hereto related unless the work includes any information that is otherwise controlled by the Government (e.g., classified information or other information subject to national security or export control laws or regulations). For any scientific, technical, or other copyright work based on or containing data first produced under this award, including those works published in academic, technical or professional journals, symposia proceedings, or similar works, the recipient grants the Government a royalty-free, nonexclusive and irrevocable license to reproduce, display, distribute copies, perform, disseminate, or prepare derivative works, and to authorize others to do so, for Government purposes in all such copyrighted works. The recipient shall affix the applicable copyright notices of 17 U.S.C. § 401 or 402 and an acknowledgement of Government sponsorship (including award number) to any work first produced under an award.

## **Use of DHS Seal, Logo and Flags**

All recipients of financial assistance must obtain DHS's approval prior to using the DHS seal(s), logos, crests or reproductions of flags or likenesses of DHS agency officials, including use of the United States Coast Guard seal, logo, crests or reproductions of flags or likenesses of Coast Guard officials.

## **DHS Specific Acknowledgements and Assurances**

All recipients of financial assistance must acknowledge and agree—and require any subrecipients, contractors, successors, transferees, and assignees acknowledge and agree—to comply with applicable provisions governing DHS access to records, accounts, documents, information, facilities, and staff.

1. Recipients must cooperate with any compliance review or complaint investigation conducted by DHS.
2. Recipients must give DHS access to and the right to examine and copy records, accounts, and other documents and sources of information related to the grant and permit access to facilities, personnel, and other individuals and information as may be necessary, as required by DHS regulations *and* other applicable laws or program guidance.
3. Recipients must submit timely, complete, and accurate reports to the appropriate DHS officials and maintain appropriate backup documentation to support the reports.
4. Recipients must comply with all other special reporting, data collection, and evaluation requirements, as prescribed by law or detailed in program guidance.

5. If, during the past three years, the recipient has been accused of discrimination on the grounds of race, color, national origin (including limited English proficiency), sex, age, disability, religion, or familial status, the recipient must provide a list of all such proceedings, pending or completed, including outcome and copies of settlement agreements to the DHS awarding office and the DHS Office of Civil Rights and Civil Liberties.
6. In the event any court or administrative agency makes a finding of discrimination on grounds of race, color, national origin (including limited English proficiency), sex, age, disability, religion, or familial status against the recipient, or the recipient settles a case or matter alleging such discrimination, recipients must forward a copy of the complaint and findings to the DHS Component and/or awarding office.

The United States has the right to seek judicial enforcement of these obligations.

## **Appendix B. Standard Forms, Certifications and Assurances**

The standard forms, certifications and assurances apply to most every DHS award recipient through a grant or cooperative agreement, and may be found through grants.gov using the following link:

<https://apply07.grants.gov/apply/FormsMenu?source=agency>

More specifically, the following are the mandatory and/or required by statute to be completed upon submission of all applications for Federal financial assistance.

For the convenience of applicants, Department of Commerce (NIST) and grants.gov have combined the three most common certification documents into one form for submission with the grant award packet. Such form is located here:

<http://csrc.nist.gov/grants/cd511.pdf>

Additional forms, including all forms for R&R and construction projects may be found using the first grants.gov link above. The links which provide certification documents have been OMB approved.