



United States  
Department of  
Agriculture

National Institute  
of Food and  
Agriculture

**National Institute of Food and Agriculture (NIFA) Federal Assistance  
Policy Guide:  
Section V: Post-award Federal Requirements  
pp. 84-138**

**NIFA Office of Grants and Financial Management**

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The contents of this document do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

## V. Post-award Federal Requirements

NIFA grant recipients are subject to post-award requirements in 2 CFR 200, Uniform Administrative Requirements, Cost Principles, and Audit requirements, adopted by 2 CFR 400, as well as other items noted in the Notice of Award and award terms and conditions.

Grantees must manage and administer their awards to ensure the Federal funds are expended on approved program activities and objectives are implemented in full accordance with U.S. statutes and public policy requirements, including but not limited to, those protecting public welfare, the environment, and prohibiting discrimination.

In addition to cross-cutting requirements that some or all Federal agencies must apply to their grant programs, NIFA grantees are subject to requirements contained in the USDA annual appropriations acts that apply to the use of NIFA grant funds, applicable provisions in other Federal agencies' appropriations acts, including Treasury, and other Federal statutes. Annual appropriations legislation may change or impose additional requirements. A list of [USDA and other regulations](#) applicable to NIFA grants is available online.

In post-award management, the grantee is responsible for establishing and maintaining the necessary policies and procedures to monitor its compliance and that of its employees, consortium participants, and contractors with these requirements; taking appropriate action to meet the stated objectives; and informing NIFA of any problems or concerns. If a grant is awarded on the basis of false or misrepresented information, or if a grantee does not comply with these public policy requirements, NIFA may take any necessary and appropriate action. Below subsections align with the sections contained in 2 CFR 200 Subpart D, Post-award Federal Provisions and also contain NIFA specific requirements.

### ***A. Standards for Financial and Program Management (2 CFR 200.300-309) ALL AWARDS***

To safeguard Federal funds, NIFA grant recipients must follow the standards for Financial and Program Management in 2 CFR 200 Subpart D. Grantee organizations must implement grants in full accordance with the U.S. Constitution, Federal Law, and public policy requirements, as detailed in the award terms and conditions. Further, grantee organizations must have systems, policies, and procedures in place by which they manage funds and activities. Grantees may use their existing systems to manage NIFA grant funds and activities so long as they are consistently applied regardless of the source of funds and meet the standards and requirements set forth in 2 CFR 200. NIFA may review the adequacy of those systems and may take appropriate action to protect the Federal government's interests, including, but not limited to, the use of special terms and conditions.

NIFA also will monitor the grantee's systems as part of its routine post-award oversight. The grantee's systems also are subject to audit under 2 CFR 200 Subpart F.

NIFA seeks to foster within grantee organizations an organizational culture committed to compliance, leading to both exemplary research and exemplary supporting systems and

use of resources underpinning that research. Actions to achieve this result should include a clear delineation of the roles and responsibilities of the organization's staff, both programmatic and administrative, written policies and procedures, training, management controls and other internal controls, performance assessment, administrative simplifications, and information sharing.

***B. Financial Management Systems (2 CFR 200.302) ALL AWARDS***

Grantees are required to meet the standards and requirements for financial management systems set forth or referenced in 2 CFR 200.302. The standards and requirements for financial management systems are essential to safeguarding Federal funds. NIFA cannot award a grant unless it has assurance that funds will be used appropriately, adequate documentation of transactions will be maintained, and assets will be safeguarded.

Grantees must have in place financial management systems that are sufficient to permit the preparation of required reports and that can trace funds to a level of expenditures adequate to establish that funds have been used in accordance with Federal statutes, regulations, and the terms and conditions of the award. Further, financial management systems must support record retention requirements detailed in 2 CFR 200.335. Requests for transfer of records; 200.336 Methods for collection, transmission and storage of information; 200.337 Access to records; and 200.338 Restrictions on public access to records.

The Uniform Guidance requires that the financial management system of grantees must provide for the following:

1. Identification, in its accounts, of each Federal award received and expended and the Federal programs under which they were received. Federal program and Federal Award Identification must include, as applicable, the Assistance Listing title and number, FAIN and year, name of Federal agency, and the name of any pass-through entity.
2. Accurate, current, and complete disclosure of the financial results of each Federal award or program in accordance with the reporting requirements set forth in 2 CFR 200.328 Financial Reporting and 200.329 Monitoring and reporting program performance.
3. Records that identify the source and application of funds for Federally-funded activities under each Federal award. These records must contain information pertaining to Federal awards such as: authorizations, financial obligations, unobligated balances, assets, expenditures, income and interest; and be supported by source documentation.
4. Effective control over, and accountability for, all funds, property, and other assets. Grantees must adequately safeguard all assets and assure that they are used solely for authorized purposes.
5. Comparison of expenditures to the budgeted amounts for each Federal award. Written procedures to implement 2 CFR 200.305 Payment including minimizing the time elapsed between the transfer of funds from ASAP and the disbursement by the grantees.

6. Written procedures for determining the allowability of costs in accordance with Subpart E Cost Principles and the terms and conditions of the award.

Failure to establish adequate financial management systems constitutes a material violation of the terms of the award. Under these circumstances, NIFA may include special conditions on awards or take any of the range of permitted enforcement actions specified in the Uniform Guidance, as necessary and appropriate.

**C. Grantee Internal Controls (2 CFR 200.303) ALL AWARDS**

Institutions are responsible for ensuring that effective controls are in place to ensure control and accountability for all Federally-awarded funds and property obtained with Federal monies. Internal controls are defined as a process, implemented by the grantee, designed to provide reasonable assurance regarding achievement of objectives in the following categories: a) effectiveness and efficiency of operations; b) reliability of reporting for internal and external use; and c) compliance with applicable laws and regulations (2 CFR 200.1). The Uniform Guidance significantly increased the importance of and requirements for internal controls. Grantees must establish and maintain effective internal control over their Federal award that provides reasonable assurance that the grantee is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the award. Further, the Uniform Guidance indicates that the internal controls should be in compliance with “[Standards for Internal Control in the Federal Government](#)” issued by the Comptroller General of the United States or the “Internal Control Integrated Framework” issued by the Committee of Sponsoring Organization of the Treadway Commission (COSO).

Internal controls must ensure that the grantee: complies with the U.S. Constitution, Federal statutes, regulations and the terms and conditions of the award; monitors its own compliance with statutes, regulations and the terms and conditions of the award; takes prompt action when instances of noncompliance are identified, including noncompliance identified in audit findings. Additionally awardees must take reasonable measures to safeguard protected personally identifiable (PII) information and information designated as confidential consistent with applicable Federal, state, local, and tribal laws.. Internal control requirements apply to subawards.

Grantees are also responsible for ensuring that subrecipients maintain internal controls in accordance with 2 CFR 200, the Uniform Guidance.

**D. Payment (2 CFR 200.305) ALL AWARDS**

A key principle for grantees in managing funds and making payments is to minimize the elapsed between drawdown of funds from ASAP and disbursement of funds, whether payments to subrecipients or subcontractors or paying of invoices, etc.

Under the Uniform Guidance, grantees must be paid in advance, provided that they

maintain or demonstrate the willingness to maintain both written procedures that minimize the time elapsing between the transfer of funds and disbursement, and financial systems that meet the standards for fund accountability. The timing and amount of advanced payments must be as close as is administratively feasible to the actual disbursements for direct program or project costs and the proportionate share of any allowable indirect costs. Grantees must make timely payments to contractors in accordance with contract provisions.

If the grantee cannot meet the criteria for advanced payments, NIFA may determine that reimbursement is the preferred method and will set reimbursement as a specific term of the award, in accordance with 2 CFR 200.305(b)(1)).

***E. Cost Sharing or Matching (2 CFR 200.306) ALL AWARDS***

Cost sharing or matching means the portion of project costs not paid by Federal funds or contributions (2 CFR 200.1). If the grant has matching requirements, all grantees (capacity and competitive) must follow the requirements for matching funds set forth in 2 CFR 200.306. Matching funds, including cash and third-party in-kind contributions, must be verifiable in the grantee's records; are not included as contributions for any other award; are necessary and reasonable for accomplishment of the project or program objectives; are allowable under 2 CFR part 200 Subpart E – Cost principles; are not paid by the Federal government under another Federal award unless specifically authorized<sup>14</sup>; are provided for in the approved budget when required by NIFA; and conform to other provisions of the Uniform Guidance, as applicable. Valuation of third party in-kind match must follow the requirements set forth in 2 CFR 200.306(d) – (k). Additional detailed information on match specific to competitive and capacity programs is included in Section III.C.5 of this Guide.

***F. Program Income (2 CFR 200.307) ALL AWARDS***

Program income is gross income earned by a recipient that is directly generated by a supported activity or earned as a result of the Federal award during the period of performance. Program income includes, but is not limited to, income from fees for services performance, the use or rental of real or personal property acquired under Federal awards, the sale of commodities or items fabricated under the award, license fees and royalties on patents and copyrights, and principal and interest on loans made with Federal award funds. Interest earned on advances of Federal funds is not program income.

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<sup>14</sup> Tribal Endowment funds may be used as match on other Federal awards.

Except as otherwise provided in Federal statutes, regulations, or the terms and conditions of the award, program income does not include rebates, credits, discounts, and interest earned on any of them (2 CFR 200.80). Program income requirements are governed by 2 CFR 200.307 and 7 CFR 3430.53.

A non-profit or small business grantee has no responsibility to NIFA with respect to program income earned from license fees and royalties for copyrighted materials, patent applications, trademarks, and inventions, per 37 CFR 401 “Rights to Inventions Made by Nonprofit Organization and Small Business Firms under Government Awards, Contracts, and Cooperative agreement.”

NIFA follows the addition method for treatment of program income. As such, program income earned by grantees during the project period is added to the Federal award. **The program income must then be used for award purposes and under the conditions of the award (2 CFR 200.307(e)(2)).** Program income may only be used for allowable costs in accordance with the applicable cost principles and the terms and conditions of the award. Unless a deviation from the general rule is mentioned in the terms and conditions of the specific award, there is no responsibility to the Federal government regarding program income after the project period expires (2 CFR 200.307(f)).

Consortium agreements and subawards under grants are subject to the terms of the agreement with the primary recipient with regard to the income generated by the activities, but the terms specified by the grantee must be consistent with the requirements of the grant award from NIFA. Program income must be reported by the grantee as discussed in this subsection.

The amount of program income earned and the amount expended must be reported on the appropriate annual SF-425 financial report. Any costs associated with the generation of the gross amount of program income that are not charged to the grant should be deducted from the gross program income earned, and the net program income should be the amount reported. Program income must be expended for program purposes prior to drawing down additional Federal funds from ASAP. When program income is reported on the SF-425, it is expected that program income expenditures will also be reported.

Grantees are not accountable to NIFA for program income that is earned and expended after the end of the grant period of performance unless specifically provided in the Notice of Award or award terms and conditions.

***G. Revision of budget and program plans (2 CFR 200.308) COMPETITIVE AWARDS***

The permissible program changes by the awardee, PD/PI(s), or other key project personnel in the approved project are limited to changes in methodology, techniques, or other similar aspects of the project to expedite achievement of the approved project

goals. Permissible budget changes include shifts between line items EXCEPT for shifting funds to subawards constituting more than 50 percent of the total dollars of the award or a subaward to a Federal agency. If the awardee or the PD(s) is uncertain as to whether a change complies, the question **must** be referred to the ADO for a final determination. The ADO is the signatory of the award document, not the program contact. For a change to take effect, the change in approved goals or objectives must be requested by the awardee and approved in writing by the ADO prior to effecting such changes.

In accordance with 2 CFR 200.308, grantees must request prior approval from NIFA for certain program or budget-related reasons. These are covered in Section VI.E. of this Policy Guide.

When it is necessary to request NIFA approval for a budget revision, the revised budget must be submitted as a PDF attachment to an [email](#). The request must clearly articulate the changes (i.e., it need not be submitted on the budget form that was used in the application process; the revisions need only be clearly identified) and reflect PD/PI and AR concurrence (i.e., must contain the signature of the PD/PI and AR).

#### ***H. Property Standards (2 CFR 200.310-316) ALL AWARDS***

##### **1. Property Management ALL AWARDS**

The RFA will indicate whether purchase of real property or equipment is allowable under an award. If a NIFA grant recipient purchases real property or equipment with grant funds, the terms and conditions of the award will indicate the conditions associated with the purchase of real property under the award. Property is comprised of real property, intangible property, equipment, and supplies. Property is governed by the Uniform Guidance, 2 CFR 200.310-316.

Grantees are required to be prudent in the acquisition of property under a grant-supported project. It is the grantee's responsibility to conduct a prior review of each proposed property acquisition to ensure that the property is needed and that the need cannot be met with property already in the possession of the organization. If prior approval is required for the acquisition, the grantee must ensure that appropriate approval is obtained in advance of the acquisition. The grantee also must follow appropriate procurement procedures in acquiring property, in accordance with 2 CFR 200.317-327 and their own policies and procedures.

##### **2. Real Property ALL AWARDS**

Real property is defined as land, including land improvements, structures, and appurtenances (accessories) thereto, but excludes moveable machinery and equipment. All real property acquired with NIFA grant funds is subject to the USDA property management regulations, as well as regulatory or legislative requirements, or requirements identified in the Notice of Award. Title to real property acquired under a grant or subgrant vests with either the recipient or

subrecipient when the property is acquired. Real property must be used for the originally authorized purpose as long as needed, during which time, the grantee must not dispose of it or encumber its title or other interest. When the real property is no longer needed for the original authorized purpose, the non-Federal entity must obtain disposition instructions from NIFA, per 2 CFR 200.311(c).

NIFA will provide for one of the following disposition options:

- Sell the property and compensate NIFA. The amount due to NIFA will be calculated by applying NIFA's percentage of participation in the cost of the original purchase (and cost of any improvements) to the proceeds of the sale after the deduction of any actual and reasonable selling and fixing-up expenses.
- Retain title after compensating NIFA. If title is retained, the Federal government will have a right to an amount computed by multiplying the market value of the property by the Federal share of the property.
- Transfer the title to NIFA or a third-party designated/approved by NIFA. The grantee is entitled to be paid an amount calculated by applying the grantee's percentage of participation in the purchase of the real property (and cost of any improvements) to the current fair market value of the property).

Recipients permitted to acquire real property and equipment must obtain insurance coverage equivalent to insurance coverage for property owned by the grantee; however, Federally owned property need not be insured unless required by the terms and conditions of the award (2 CFR 200.310).

### 3. Equipment ALL AWARDS

#### a. Definitions **ALL AWARDS**

Equipment is defined as tangible personal property (including information technology systems) having a useful life of more than 1 year and a per-unit acquisition cost which equals or exceeds the lesser of the capitalization level established by the non-Federal entity for financial statement purposes, or \$5,000.

General Purpose equipment is defined as equipment which is not limited to research, medical, scientific or other technical activities. Examples include office equipment and furnishings, modular offices, telephone networks, information technology equipment and systems, air conditioning equipment, reproduction/duplicating and printing equipment, and motor vehicles (2 CFR 200.1)

Special purpose equipment is defined as equipment that is used only for research, medical, scientific, or other technical activities. Examples of special purpose equipment include microscopes, x-ray machines, surgical instruments, and spectrometers (2 CFR 200.1)



b. Prior approval **ALL AWARDS**

Equipment purchases are subject to prior approval requirements under the Uniform Guidance.

i. Competitive awards

Proposed equipment is included in the SF-424R&R budget and budget narrative. Upon award, the approved budget for competitive grants includes prior approval to acquire the equipment unless stated otherwise. Additional prior approval for equipment purchases are waived under the Research Grant Terms and Conditions.

ii. Capacity awards

Prior approval from NIFA is required before expenditures are incurred for:

- General purpose equipment costing \$5,000 or more and having a useful life of more than 1 year; and
- Special purpose equipment costing more than the simplified acquisition threshold, currently \$250,000, and having a useful life of more than 1 year. (Prior approval is waived for special purpose equipment costing less than \$250,000).

Grantees must submit requests in advance of the expenditure. The request must include the item name, description and purpose including alignment with plan of work, estimated or actual cost, and estimated useful life. Grantees can submit prior approval requests via [email](#). Requests will be reviewed and responded to within 30 days from receipt of complete information. Approvals will be sent via email to the AR submitting the request. Expedited review may be requested. More information on capacity grant [prior approval](#) for equipment, including templates for submitting requests, is available on the NIFA website.

c. Title **ALL AWARDS**

Title to equipment acquired under a Federal awards vests with the grantee with the following conditions:

- i. Use the equipment for the authorized purposes of the project during the period of performance or until the property is no longer needed for the purposes of the project
- ii. Not encumber the property without approval from the ADO
- iii. Use and dispose of the property in accordance with the Uniform Guidance

If the recipient is a state, a state must use, manage, and dispose of equipment acquired under a Federal award by the state in accordance with state laws and procedures. All other recipient types are to follow 2 CFR 200.313.

d. Use of Equipment **ALL AWARDS**

Use of the equipment is for the authorized purposes of the grant during the period of performance or until it is no longer needed for the purposes of the project, whether or not the Federal award continues to support the project or program. The grantee must not encumber the property without prior approval from NIFA. When no longer needed for the original purpose or project, the equipment may be used for other activities in the following order or priority:

- Activities under a different NIFA issued award
- Activities under a different USDA award
- Activities under a Federal award
- Activities under Federal awards from other Federal awarding agencies (this includes consolidated equipment for information technology systems)

As long as the equipment is used on the project or program for which it was acquired, grantees may make equipment available for use on other projects or programs currently or previously supported by the Federal government, provided that such use will not interfere with the work for which it was originally acquired. First preference for other use must be given to other programs or projects supported by NIFA; second preference must be given to programs or projects under Federal awards from other Federal awarding agencies. Use for non-Federally-funded programs or projects is also permissible. User fees must be considered, if appropriate and in accordance with 2 CFR 200 and the institution's policies and procedures. If user fees are charged, the income would be considered program income and must be reported on the SF-425 Federal Financial Report and used on allowable grant activities.

e. Management Requirements **ALL AWARDS**

Grantees must maintain property records that include:

- A description of the property;
- A serial number or other identification number;
- The source of funding for the property (including the Federal Award Identification Number);
- The title holder;
- The acquisition date;
- Cost of the property;
- Percentage of Federal participation in the project costs for the Federal award under which the property was acquired;
- The location, use, and condition of the property; and
- Any ultimate disposition data, including the date of disposal and sale price of the property.

At least once every 2 years, grantees must take a physical inventory of the property and reconcile with the property records. Further, grantees must develop:

- A control system to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft must be investigated; and
- Adequate maintenance procedures to keep the property in good condition.

Finally, grantees must establish proper sales procedures – if grantees are authorized or required to sell the property – to ensure the highest possible return.

f. **Sale and Disposition of Equipment ALL AWARDS**

Whether during the period of performance or after the period of performance has ended, when equipment acquired under a grant is no longer needed for the original project, a grantee may use it for other activities currently or previously supported by another Federal award. If the grantee has no use for the equipment, before selling or disposing of the equipment, the grantee must request disposition instructions from NIFA if the equipment has a current per unit fair market value of \$5,000 or more. To request disposition instructions, contact the ADO or grant specialist listed in the Notice of Award. Items with a fair market value of \$5,000 or less may be retained, sold, or otherwise disposed of with no further obligation to NIFA.

When providing disposition instruction, NIFA may direct a grantee to invest the proceeds in other NIFA or Federal award activities or it may request reimbursement by multiplying the current market value or proceeds from sale by NIFA's percentage of participation in the cost of the original purchase. Additional disposition options are detailed at 2 CFR 200.313(e).

g. **Supplies and Other Expendable Property ALL AWARDS**

Ownership of supplies rests with the grantee upon acquisition. Supplies are defined as all tangible personal property other than those that meet the definition of equipment. A computing device is a supply if the acquisition cost is less than \$5,000. Items that meet the definition of equipment at acquisition may depreciate such that they become a supply during the life of the award or after, for disposition purposes. No disposition instructions are required for supplies with the following exception: if there is an inventory of unused supplies at the completion or termination of the award that exceeds \$5,000 in total aggregate value, and the supplies are not needed for any other Federal award, the grantee, whether they retain or sell the unused supplies, must compensate the Federal government per the calculation method included in 2 CFR 200.313(e)(2).

As long as the Federal government retains an interest in the supplies, grantees must not use supplies acquired under a Federal award to provide services to

other organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute.

#### 4. Intangible Property ALL AWARDS

Intangible property is defined as property having no physical existence, such as trademarks; copyrights; patents and patent applications; and property, such as loans, notes, and other debt instruments, lease agreements, stock and other instruments of property ownership (whether the property is tangible or intangible). Intangible property under NIFA awards is comprised of research results, publications, data, inventions, and patents. Intangible property is covered in the Uniform Guidance at 2 CFR 200.315 and in NIFA's research terms and conditions.

Title to the intangible property acquired under a Federal award vests upon acquisition with the grantee. The grantee must use the intangible property for the originally authorized purpose and must not encumber the property without approval of NIFA. When no longer needed for the originally authorized purpose, disposition of the intangible property occurs in accordance with the provisions in 2 CFR 200.313(e).

##### a. Research Results: Publications, Intellectual Property Rights, and Sharing Research Resources **ALL AWARDS**

It is NIFA policy that the results and accomplishments of the research, education, and extension activities funds be made available to the public. PD/PIs and grantee organizations are expected to make the results and accomplishments of their activities available to the research community and to the public at large. If an organization's NIFA funded research, education, and extension activities result in inventions, Federal legislation and regulations dictate the rights and title to the invention. The results of NIFA funded research are publicly available on the NIFA [Data Gateway](#).

##### b. Rights in Data **ALL AWARDS**

Grantees generally own the rights in data resulting from a grant-supported project. Special terms and conditions of the award may indicate alternative rights, e.g., special rights under a Small Business Innovation Research (SBIR) grant, under a cooperative agreement or based on specific programmatic considerations as stated in the applicable RFA. NIFA's research terms and conditions state that NIFA does not waive the Federal Government's rights concerning data first produced under the award, as described in 2 CFR § 200.315(d).

Except as otherwise provided in the terms and conditions of the award, any publication, data, or other copyrightable work developed under a NIFA grant may be copyrighted without NIFA approval, unless the project falls under the special provisions found in the authorizing statute of the program. The programs terms and conditions will outline these specific provisions. NIFA reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use

the work for Federal purposes, and to authorize others to do so when data has been developed by an educational institution with NIFA support. For SBIR grants, rights in technical data, including software developed under the award, remain with the grantee. However, NIFA will have the rights as outlined in the Federal Acquisition Regulations (FAR) Clause 52.227-20 for data originating from a SBIR award. Recipient's rights in inventions and patents are discussed in Section V.H.4.vii of this Policy Guide.

Rights in data also extend to students, fellows, or trainees under awards whose primary purpose is educational, with the authors free to copyright works without NIFA approval. Data developed by a consortium participant also is subject to this policy.

- c. **Access to Research Data: REEport and NIFA Data Gateway ALL AWARDS**  
All projects supported by NIFA funds must be documented in the NIFA Data Gateway database. Project data are accepted into this system electronically via the REEport data collection software. No funds will be released to grantees until the required initial information has been electronically submitted through REEport. NIFA requires annual progress reporting for both competitive and capacity grants.

Grantees should consult the Notice of Award and award terms and conditions to determine if additional technical reports are required or reports are to be submitted more frequently than annually. Any additional reporting requirements will be included as special terms and conditions of the NIFA award (7 CFR 3430.55). Information submitted via REEport is available to the public in the NIFA [Data Gateway](#). NIFA's Planning, Accountability, and Reporting Staff (PARS) is responsible for maintaining REEport and the Data Gateway. Project information submitted through REEport is also accessible through the Research, Economics, and Education Information System (REEIS) website, and the NIFA website. The Project Initiation form in REEport is required to be submitted before a Project's start date; this information is made public in the above-mentioned systems once submitted through REEport. Awardees can access REEport through the NIFA [Reporting Portal](#).

- d. **Sharing Research Resources ALL AWARDS**  
NIFA encourages sharing the unique research resources developed with the support of NIFA funds. NIFA believes that data sharing is essential for expedited translation of research results into knowledge, products, and procedures to improve agricultural research, education, and extension. Sharing such unique research resources (also called research tools) is an important means of enhancing the value of NIFA-sponsored research. Restricting the availability of unique resources can impede the advancement of further research. Therefore, when these resources are developed with NIFA funds

and the associated research findings have been accepted for publication, or after they have been provided to NIFA, it is important that they be made readily available for research purposes to qualified individuals within the scientific community. In cases where subawards, including consortium agreements, produce research data or tools, the recipient must include a provision requiring third-party data or research tools to be made available to the recipient and to NIFA, as appropriate. NIFA recognizes the rights of grantees and contractors to elect and retain title to subject inventions developed with Federal funding pursuant to the Bayh-Dole Act. Grantees should note that the applicable RFA and Notice of Award will include any specific data-sharing requirements associated with a particular award.

Data-sharing agreements must reflect the objectives of the Bayh-Dole Act and the Technology Transfer Commercialization Act of 2000 to ensure that inventions and discoveries subject to copyrighting and patents are used in a manner to promote free competition and enterprise without unduly encumbering future research and discovery.

e. Availability of Research Resources **ALL AWARDS**

Documents and/or samples of any material developed during a NIFA-supported project must be provided upon request. If research resources are shared with the research community for a fee, fees must be treated as program income. Since NIFA retains a non-exclusive royalty-free right to all research results from NIFA funded research, no fees will be collected from NIFA.

Investigators are expected to submit unique biological information, such as DNA sequences or crystallographic coordinates, to the appropriate data banks so that they can be made available to the broad scientific community. When distributing unique resources, investigators are to include pertinent information on the nature, quality, or characterization of the materials.

NIFA recognizes that data sharing may be complicated or limited, in some cases, by organizational policies; local Institutional Review Board (IRB) rules; and local, state, and Federal laws, and regulations. The rights and privacy of individuals who participate in NIFA-sponsored research must be protected at all times. Thus, data intended for broader use should be free of identifiers that would permit linkages to individual research participants and variables that could lead to deductive disclosure of the identity of individual subjects. Investigators also must exercise great care to ensure that resources involving human cells or tissues do not identify original donors or subjects, either directly or through identifiers such as codes linked to the donors or subjects.

Applicant organizations unable to comply with these requirements should promptly contact NIFA to discuss the circumstances, obtain information that might enable compliance, and reach an understanding in advance of an award.

f. Publications **ALL AWARDS**

As a means of sharing knowledge, NIFA encourages grantees to arrange for publication of NIFA-supported original research in primary scientific journals. Grantees also should assert copyright in scientific and technical articles based on data produced under the grant where necessary to effect journal publication or inclusion in proceedings associated with professional activities. Journal or other copyright practices are acceptable unless the copyright policy prevents the grantee from making copies for its own use.

Proper acknowledgement of public funding in published scientific articles, manuscripts, and presentations in compliance with 2 CFR 415.2 is critical for the success of the agency's programs.<sup>15</sup> Please use the following language to acknowledge NIFA support in such publications and associated presentations, as appropriate:

***“This research was supported [in part] by the intramural research program of the U.S. Department of Agriculture, National Institute of Food and Agriculture, [insert program type, e.g., Hatch/Evans-Allen/McIntire-Stennis, etc., and accession number, if applicable].”***

The recipient must also include a disclaimer in all publications and presentations stating the following:

***“The Findings and Conclusions in This Preliminary [Publication/Presentation/Blog] Have Not Been Formally Disseminated by the U. S. Department of Agriculture and Should Not Be Construed to Represent Any Agency Determination or Policy.”***

Presentations should include this disclaimer on the title slide in similar font and size to the name and title of the presenter.

If the grantee plans to issue a press release concerning the outcome of NIFA grant-supported research, they should notify NIFA in advance to allow for coordination. Publications resulting from work performed under a NIFA grant-supported project must be included as part of the annual or final progress report submitted to NIFA. When publications are available electronically, electronic access information should be provided.

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<sup>15</sup> A scientific product is defined as the results of scientific activities, including analysis, synthesis, compilation, or translation of scientific, statistical, economic, and technological information and data into formats for the use of USDA or the nation

g. Patents and Inventions **ALL AWARDS**

Innovative research conducted by NIFA grantees can result in inventions and data subject to copyright and patent regulations. Inventions developed with the support of a Federal grant or other financial assistance is subject to special legislation and regulations. The primary source of guidance is the Bayh-Dole Act, as amended by the Technology Transfer Commercialization Act of 2000 (P.L.

106-404) and the implementing regulations, located at 37 CFR 401. The principal objectives of these laws and the implementing regulations are to promote commercialization of Federally-funded inventions, while ensuring that inventions are used in a manner that promotes free competition and enterprise without unduly encumbering future research and discovery (37 CFR401). Legislation and regulations related to patent rights in inventions made with Federal financial support also seek to protect the public against nonuse and unreasonable use of Federally-funded inventions (35 U.S.C. 200). Federal laws and regulations only apply to “subject inventions.” A “subject invention” is conceived or first actually reduced to practice in the performance of a Federally-supported project (37 CFR 401). The Bayh-Dole Act defined an invention as any invention or discovery that is or may be patentable or otherwise protectable under Title 35 of the United States Code, or any novel variety of plant, which is or may be protectable under the Plant Variety Protection Act (7 U.S.C. 2321 *et seq.*).

The awardee, rather than NIFA, retains ownership rights to inventions and patents despite the Federal funding. The purpose of the applicable legislation and regulations is to ensure that Federal agencies support broadening the US technology base by moving new knowledge gained in the research lab into the development of new products and processes (Executive Order 12591, April 10, 1987, 52 FR 13414). NIFA does have the right to periodic reports regarding the use of the invention (37 CFR 401.8). Additionally, USDA reserves a royalty-free, nonexclusive, and irrevocable license to exercise, and to authorize others to exercise, the rights for Federal Government purposes. Subject to this license, the owner is free to exercise, preserve, or transfer all its rights. However, the recipient must ensure that no agreement is entered into for transferring the rights, without requesting prior approval from NIFA, per 2 CFR 200.315(a).

The Bayh-Dole Act of 1980 (Public Law 96-517; 35 U.S.C. 200-212) and the related Executive Order, No. 12591 (April 10, 1987) provide incentives that encourage the practical application of research supported through Federal funding agreements. To be able to retain rights and title to inventions made with Federal funds (i.e., subject inventions), the grantee must comply with a series of regulations that ensure the timely transfer of the technology to the private sector, while protecting limited rights of the Federal government. If the recipient is a small business or non-profit organization (including universities and other institutions of higher education), the allocation of rights in inventions produced



under a grant or cooperative agreement will be determined in accordance with the Bayh-Dole Act, 37 CFR 401, 2 CFR 200, and the grant terms and conditions. Notably, scholarships, fellowships, training grants, or other funding agreements made by NIFA, or any other Federal agency, to an awardee for primarily educational purposes cannot contain any provision giving NIFA or any other Federal agency any rights to inventions made by the awardee (35 U.S.C. 212).

Grantees with inventions subject to copyright or patent protections developed during a Federally-funded project are required to make efforts to commercialize the subject invention through patent or licensing, formally acknowledge the Federal government's support in all patents that arise from the subject invention and formally grant the Federal government a limited use license to the subject invention ([See Research Terms and Conditions](#)).

NIFA awards are subject to the Patents Rights (Small Business Firms and Nonprofit Organizations) clause at 37 CFR 401.14 and the following:

(1) In each instance where the term "contract" or "contractor" is used in the clause, those terms must be read as "award" and "recipient," respectively.

(2) In each instance where the term "Federal agency," "agency," or "funding Federal agency" is used in the clause, the term must be read to mean the awarding agency for the award.

(3) Under paragraph (g) of the clause, the title must read "Contracts and Subawards Under the Award" and, in that paragraph, "subcontract" and "subcontractor" must be read as "contract" or "subaward."

(4) Under subparagraph (g)(2) of the clause, if a contract or subaward is to be made to any organization other than a non-profit organization or small business firm, as defined in paragraph (a) of the clause, the recipient must contact the cognizant awarding agency official to ascertain the appropriate patent clause.

h. Invention Reporting **ALL AWARDS**

Grantees must disclose to NIFA all subject inventions within two months after disclosing to the individual at the recipient institution responsible for patent matters (37 CFR 401.14). The disclosure to NIFA must be in writing and identify the individuals working on the invention, as well as the grant number or other identifying information (37 CFR 401.14). Technical detail sufficient to convey a clear understanding of the invention should be included in the disclosure (37 CFR 401.14). Grantees are also required to disclose any publications related to the invention and the status of the publication. Grantees also report patent data within each project in REEport and Interagency Edison (iEdison).

Invention disclosure statements pursuant to 37 CFR 401.14(c) shall be made by creating an invention record using iEdison. All supporting documentation must be submitted electronically using iEdison.

Within 2 years of disclosure of the invention, the grantee must determine if they will retain title to the invention or elect to waive their ownership rights. Within 1 year of electing to retain title, grantees must file their initial patent application or non-provisional patent or plant variety protection (PVP) application, for the subject invention, unless otherwise provided (37 CFR 401.14). On the patent and plant variety protection (application, the grantee must include the following statement: "This invention was made with government support under (identify the contract) awarded by (identify the Federal agency). The government has certain rights in the invention" 37 CFR Part 401.14(f)(4). If necessary, additional patent applications in other countries or international patent offices must be submitted within 10 months of filing the initial patent application, or six months from the date the US Commissioner of Patent and Trademarks grants permission to file a foreign patent application (37 CFR 401.14).

If the grantee fails to elect to retain title within the specified time limits, including any extensions of time granted at NIFA's discretion, the grantee will convey title to NIFA, upon written request to do so (37 CFR 401.14). If NIFA obtains title to a subject invention, the grantee then retains a non-exclusive, royalty-free license in each subject invention (37 CFR 401.14). Additionally, the Federal government will not be entitled to publicly disclose or publish research results except under any one of the following circumstances: (1) The award recipient publicly discloses or gives permission for publication; or (2) The award recipient does not elect to file for a U.S. patent or PVP on such results, pursuant to 37 CFR Part 401.14(c)(2) and (3); or (3) After the award recipient files for a U.S. patent or PVP pursuant to 37 CFR Part 401.14(c)(3). The government is limited to publication of the information on publicly accessible databases, such as Genbank. If a subrecipient, rather than the primary grantee, develops a subject invention with the support of a Federal award, the subrecipient retains the rights to the subject invention and must comply with the same reporting requirements (37 CFR 401.14). A recipient awarding a subgrant is allowed to reserve a nonexclusive license for itself, similar to the one reserved for USDA, with respect to any copyright or rights subject to this section that arise under the subgrant.

Any information that NIFA obtains from grantees related to subject inventions, as well as any information on utilization or efforts to obtain utilization as part of NIFA required reporting will be treated by NIFA as commercial and financial information obtained from a person and privileged and confidential and not subject to disclosure under FOIA (35 U.S.C. 205). Grantees with subject inventions are not permitted to grant to any person an exclusive right to use or sell the subject invention unless the purchaser agrees that any product embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. Deviation from this requirement must be approved by NIFA. A grantee's failure to

comply with invention reporting requirements and/or associated NIFA policies on intellectual property and resource sharing may result in the loss of patent rights or a withholding of grant funds or other enforcement actions (37 CFR 401.14).

NIFA's website has a page dedicated to [Intellectual Property Reporting](#). Refer to the table below for Invention Reporting (37 CFR 401).

Invention Reporting Requirement	Action Required	When Action Must be Taken	Notes	Regulatory Reference (37 CFR 401) <sup>16</sup>
<b>Employee Agreement to Disclose All Inventions</b>	Employees of the grantee institution supported by the Federal award (e.g., PD/PI) must sign an agreement to abide by the terms of the Bayh-Dole Act and the grant terms and conditions as they relate to intellectual property rights.	At time of employment.	Grantee organizations and consortium participants must have policies in place regarding ownership of intellectual property, including conflict of interest issues.	401.14, Standard Patent Rights Clause (f)(2)
<b>Invention Report and “Disclosure”</b>	The grantee organization must submit to NIFA a report of any subject invention. This includes a written description (the “invention disclosure”) of the invention with complete technical detail.	Within two months of the inventor’s initial report of the invention to the grantee organization.	Grantees must report via iEdison ( <a href="http://www.iedison.gov">www.iedison.gov</a> ).	401.14(a)(2) 401.14(c)(1)
<b>Rights to Consortium Participant Inventions</b>	Consortium participants under NIFA grants retain rights to any subject inventions they make.	Within two months of the inventor’s initial report of the invention to the consortium participant.	The grantee cannot require ownership of a consortium participant’s subject inventions as a term of the consortium agreement.	401.14(g)(1) 401.14(g)(2)
<b>Election of Title to Invention</b>	The grantee must notify NIFA of its decision to retain or waive title to invention, patent, and PVP rights.	Within 2 years of the initial reporting of the invention to NIFA.	Grantees must report via iEdison.	401.14(b) 401.14(c)(2) 401.14(f)(1)

<sup>16</sup> Please note, all references to sections in 37 CFR 401.14 are two sections within the Standard Patent Rights Clause, reproduced in its entirety in that section.

<b>Invention Reporting Requirement</b>	<b>Action Required</b>	<b>When Action Must be Taken</b>	<b>Notes</b>	<b>Regulatory Reference (37 CFR 401)<sup>16</sup></b>
<b>Confirmatory License</b>	For each invention, the grantee must provide a user license to NIFA.	When the initial non-provisional patent and PVP application is filed.	Grantees must report via iEdison.	401.14(f)(1)
<b>Patent and PVP Application</b>	The grantee must inform NIFA of the filing of any non-provisional patent and PVP application. All patent and PVP applications must include a Federal government support clause.	Within 1 year after election of title, unless there is an extension.	An initial patent application is defined as a non-provisional U.S. application. The patent and PVP application number and filing date must be provided. The following language is to be used on patent and PVP application: "This invention was made with government support under (identify the funding award) awarded by NIFA. The government has certain rights in the invention." Grantees must report via iEdison.	401.14(c)(3) 401.2(n) 401.14(f)(4)
<b>Assignment of Rights to Third Party</b>	If the grantee is a non-profit organization, it must request NIFA approval to assign invention or U.S. patent rights to any third party, including the inventor(s).	All communication for such requests must be sent to NIFA's intellectual property primary contacts, as identified on NIFA's intellectual property reporting webpage.	Grantees that are for-profit entities (including small businesses) do not need to ask approval, but ongoing reporting remains a requirement for each invention.	401.14(k)

<b>Invention Reporting Requirement</b>	<b>Action Required</b>	<b>When Action Must be Taken</b>	<b>Notes</b>	<b>Regulatory Reference (37 CFR 401)<sup>16</sup></b>
<b>Issued Patent and PVP</b>	The grantee must notify NIFA that a patent or PVP has been issued.	When the patent or PVP is issued.	The patent or PVP issue date, number, and evidence of Federal government support clause must be provided. Grantees must report via iEdison.	401.5(f)(2)
<b>Extension of Time to Elect Title or File Patent or PVP</b>	The grantee may request an extension of up to 2 years for election of title, or an extension of up to 1 year for filing a patent of PVP application.	As needed.	Requests for extension of time require prior approval. Grantees must make the request via iEdison.	401.14(c)(4)
<b>Change in Patent or PVP Application Status</b>	The grantee must notify NIFA of changes in patent or PVP status in iEdison.	Not less than 30 days before any pending protection office deadline.	This notification allows NIFA to consider continuing the protection action.	401.14(f)(3)
<b>Invention Utilization Report</b>	The grantee must submit information about the status of commercialization of any invention for which title has been elected.	Annually.	This report gives an indication of whether the objectives of the law are being met. Specific reporting requirements can be found in iEdison.	401.14(h)
<b>Final Invention Statement And Certification (DD Form 882)</b>	The grantee must submit to NIFA a summary of all Inventions made during the entire term of each grant award. Email the DD Form 882 to the NIFA <a href="#">Intellectual Property</a> contacts.	Within 90 days after the project period (competitive segment) ends.	Required information is specified on the required form. If no inventions occurred during the project period, a negative report must be submitted to NIFA's primary <a href="#">Intellectual Property</a> contacts. .	401.5(f)(1) And 401.14(f)(5)

i. **Plant Variety Protection ALL AWARDS**

The breeder of any sexually reproduced or tuber propagated plant variety (other than fungi or bacteria) who has so reproduced the variety is entitled to plant variety protection for the variety, subject to certain conditions and requirements. Similar to development of inventions that are subject to patent and copyright registration, the Plant Variety Protection Act facilitates a system for breeders of protectable plant varieties to register their development. A plant variety is eligible for registration if it is new, distinct, uniform, and stable.

The plant the grantee is seeking to protect must be new. A plant is considered new if on the date of filing the application for plant variety protection, propagated or harvested material of the plant variety has not been sold or otherwise disposed of to other persons, by, or with the consent of, the breeder, or the successor in interest of the breeder, for purposes of exploitation of the variety in the United States, more than 1 year prior to the date of filing. A plant variety is also considered new if the plant has not been sold or otherwise disposed of in any area outside of the United States more than 4 years prior to the date of filing, except in the case of a tuber propagated plant variety subject to USDA waiver of the limitations. The plant variety must be distinct, in the sense that the variety is clearly distinguishable from any other variety publicly known to exist or known as a matter of common knowledge at the time of the filing of the application. The variety must also be uniform, in the sense that any variations are describable, predictable, and commercially acceptable. The plant variety must also be stable, in the sense that the variety, when reproduced, will remain unchanged with regard to the essential and distinctive characteristics of the variety with a reasonable degree of reliability commensurate with that of varieties of the same category in which the same breeding method is employed (7 U.S.C. 2402).

The owner of the plant variety is the party eligible to file an application for a certificate of Plant Variety Protection with the USDA Agricultural Marketing Service (AMS) Plant Variety Protection Office (PVPO). The PVPO will determine if the variety submitted is in fact new, distinct, genetically uniform, and stable. Grantees must comply with [PVPO's application requirements](#).

All pending application contents are confidential and information on the application contents will not be distributed (7 U.S.C. 2426). Grantees should note that plants subject to protection under the Plant Variety Protection Act are also eligible for protection under a utility patent.

Each certificate of plant variety protection certifies that the breeder has the right, during the term of the protection, to prevent others from selling the variety, offering it for sale, reproducing, importing or exporting, conditioning, stocking, or using the variety in producing a hybrid or different variety, as

provided by the Plant Variety Protection Act (7 CFR 97.1). Grantees should note that if the USDA determines that a protected plant variety should be declared open to use by the public, the USDA will give the owner of the variety appropriate notice and an opportunity to respond (7 CFR 97.700).

j. Interagency Edison (iEdison) **ALL AWARDS**

Pursuant to the requirement that all recipients of Federal grants or contracts report details of inventions and patents made through such awards, the National Institutes of Health (NIH) developed an on-line Extramural Invention Information Management System; Edison. The Edison system was deployed in October 1995, becoming the first Web-based electronic system in the government to support administrative requirements. iEdison assists with managing the required reporting on subject inventions and maintains the confidentiality of the information. Access to [iEdison](#) is available on-line.

An overview of the iEdison invention reporting process, an iEdison tutorial, and extensive help text can be found as links on the iEdison home page. Requests for detailed instructions or other questions regarding iEdison should be directed to:

Division of Extramural Inventions & Technology Resources (DEITR)

National Institutes of Health (NIH)  
6705 Rockledge Drive, Suite 310, MSC 7980  
Bethesda, Maryland 20892-798

Telephone: (301) 435-1986  
Facsimile: (301) 480-0272  
Email: [edison@od.nih.gov](mailto:edison@od.nih.gov)

The invention report and a copy of the signed invention disclosure must be reported electronically through the Interagency Edison Web interface. To submit the signed disclosure electronically requires that it be rendered as a PDF or TIFF file. The signed disclosure should contain a brief description of the original invention including the Title, Inventor(s) Name(s), and source of Federal support used (e.g., Agency Award Number). After the report and disclosure are received in the iEdison system, NIFA will have access to a copy of the disclosure document.

NIFA grantees should use iEdison to make changes to the disposition of the invention, including title election or non-election, assignment of rights to third parties, patent application(s) or PVP(s), and patents or PVP(s) received. iEdison also supports electronic submission of documents required for several other aspects of the Bayh-Dole reporting process. Once a patent or PVP is applied for and an application serial number is available, an executed confirmatory license



to the government must be submitted. The license must also be submitted in instances where the invention has been licensed but not patented (as is the case of biological materials). For this purpose, iEdison provides a confirmatory license template that can be submitted via fax. NIFA's website contains [step-by-step instructions](#) for entering PVP data into iEdison.

The awardee organization must submit a copy of the portion of the patent or PVP application that contains the "Government Support Clause," offering proof of formal acknowledgment of government support of the underlying invention. For PVP applications, the government support clause must be inserted in Exhibit E, Block 11 of the application.

Requests for assignment of rights to third parties (e.g., the inventor) must include certification by the inventor. The certification process is defined, and can be carried out as described, under [the NIFA Intellectual Property webpage](#). The signed certification including a detailed justification, must be emailed to the NIFA intellectual property contacts, named on the [NIFA Intellectual Property webpage](#).

k. Royalties and Licensing Fees from Copyrights, Inventions, and Patents **ALL AWARDS**

Grantees can earn royalties, license fees, and other income from a copyrighted work developed under a NIFA grant or subgrant. The grant or subgrant agreement governs the disposition of income from copyrighted work. NIFA's research grant terms and conditions state that recipients have no responsibility to NIFA with respect to program income from license fees and royalties for copyrighted material, patents, patent applications, trademarks, and inventions made under a NIFA award. A recipient is not prohibited from imposing disposition requirements on sub-recipients earning income from royalties, license fees, and other copyrighted work. Disposition requirements imposed on sub-recipients must be in addition to, and not inconsistent with, any requirements imposed by the provisions of the grant award.

In accordance with the standard patent rights clauses to be included in grant agreements, as appropriate, NIFA requires reporting on the use of subject inventions and other information that NIFA reasonably determines must be reported (37 CFR 401.14(h)). As part of the annual subject invention utilization report, recipients must report income generated by all subject inventions to which title has been elected, including inventions that have been patented and those that are licensed but not patented.

l. Transfer of Rights to the Inventor **ALL AWARDS**

Subject to certain conditions in 37 CFR 401.9, employee-inventors may request to retain title to their inventions to which the grantee/contractor does not elect

to retain title. USDA requires that an inventor certification form be completed by the inventor(s) before NIFA will consider an inventor's request to retain title to an invention. This is to ensure that inventors who are permitted to retain title to inventions made with NIFA funding understand their responsibilities to the government to file for patent protection and carry out other responsibilities set forth by 37 CFR 401.9 and to initiate USDA consultation with the grantee/contractor. It is USDA policy that its approval of the inventor's request to retain title is equivalent in effect to election of title to the invention by the grantee/contractor.

Among the responsibilities under 37 CFR 401, the inventor(s) has 1 year from the date of approval by USDA to seek patent protection as set forth by 37 CFR 401.14(c)(3). Rights to the invention will revert to the government after 1 year unless an extension of time is requested from NIFA following the procedures on NIFA's Intellectual Property web page. Inventors who wish to retain title to their invention(s) should complete the inventor certification form. The responsible official at the grantee/contractor organization must then complete and sign the lower portion of the certification.

m. Special Provisions for Grants with Non-Profit Organizations **COMPETITIVE AWARDS**

Non-profit organization grantees with subject inventions that are licensing their invention must make a reasonable effort to attract small business firms and must give such firms preference in licensing. Licensing decisions of small business are subject to NIFA review (37 CFR 401.14).

Non-profit organizations receiving NIFA funds are not permitted to transfer the rights of a subject invention without NIFA prior approval, unless the assignment of rights in the invention is made to an organization with its primary function being invention management (subject to the above requirements for transfer of an invention). The grantee non-profit will also be required to share royalties with the inventor (35 U.S.C. 202(c)(7)). Grantees should review existing agreements with third parties and revise them, as appropriate, to ensure consistency with the terms and conditions of their NIFA award and proper representation of the objectives and requirements of the Bayh-Dole Act. Non-profit grantees should contact NIFA and consult the Bayh-Dole Act and 37 CFR 401 for further guidance on the transfer of rights in inventions.

The central point of contact at NIFA for questions and issues pertaining to patents and inventions including plant variety protections (PVP) (this does **not** include questions and issues regarding Interagency Edison) is: USDA NIFA PARS at [bayhdole@nifa.usda.gov](mailto:bayhdole@nifa.usda.gov).

## ***I. Procurement (2 CFR 200.317-327) ALL AWARDS***

This policy guide contains the standards from the Uniform Guidance. Grantee will follow the terms and conditions of their grant award as well as the documented procurement practices, outlined by OMB.

### **1. General procurement standards ALL AWARDS**

Consistent with the Notice of Award sheet and the award terms and conditions, recipients may use Federal award money to procure property, real property, equipment, and services. When entering into a procurement transaction, certain standards must be followed, in accordance with 2 CFR part 200. State and local government recipients follow the same policies and procedures used as procurements with non-Federal funds (2 CFR 200.317). All other types of grantees, including subrecipients of a state, follow 2 CFR 200.318 General procurement standards through 2 CFR 200.327 (2 CFR 200.317).

All recipients of NIFA grants must have written procurement procedures which reflect applicable state, local, and tribal laws and regulations, provided that the procedures conform to applicable Federal law and the standards identified in 2 CFR 200. Additionally, grantees must maintain written standard of conduct covering conflicts of interest and governing the actions of their employees engaged in the selection, award, or administration of a contract supported by a NIFA award if the employee has a real or apparent conflict of interest.

Conflict of interest may occur when an employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the above parties, has a financial or other interest in or a tangible personal benefit from a form considered for a contract.

A grantee's written procedures must include provisions to avoid acquisition of unnecessary or duplicative items and consideration should be given to consolidating or breaking out procurement to obtain more economical purchases. To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the Federal government, grantees are encouraged to enter in state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services. Competition requirements will be met with documented procurement actions using strategic sourcing, shared services, and other similar procurement arrangements.

Grantees must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Considerations will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

Where applicable or where required in the award terms and conditions, procurements must be in accordance with Sections 2 through 4 of the Act of March 3, 1933 (41 U.S.C. 8301-8305), popularly known as the Buy American Act.

Time and materials contracts may only be used after a grantee makes the determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk.

Grantees must be responsible, in accordance with good administration practices and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include source evaluation, protests, disputes, and claims. These standards do not relieve the grantee of any contractual responsibilities under its contracts. NIFA will not substitute its own judgment for that of the grantee unless the matter is primarily a Federal concern. Violations of the law will be referred to the local, state, or Federal authority having proper jurisdiction.

Grantees' policies and procedures must be in compliance with any additional requirements contained in 2 CFR 200.318-327.

## 2. Competition ALL AWARDS

Once it is determined that procurement is necessary to carry out the purpose of the Federal award, all procurement transactions for the acquisition of property or services required under a Federal award must be conducted in a manner providing full and open competition consistent with the standards of the Uniform Guidance (2 CFR 200.319). In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statement of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include, but are not limited to:

- Placing unreasonable requirements on firms in order for them to qualify to do business;
- Requiring unnecessary experience and excessive bonding;
- Noncompetitive pricing practices between firms or between affiliated companies; noncompetitive contracts to consultants that are on retainer contracts;
- Organization conflicts of interest;
- Specifying a brand name product instead of allowing "an equal" product to be offered and describing the performance or other relevant requirements of the procurements; and
- Any arbitrary action in the procurement process.

Grantees must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical

preferences in the evaluation of bids or proposals, except in those cases where Federal statutes expressly mandate or encourage geographical preference. Grantees must have written procedures for procurements that ensure that all solicitations meet the criteria specified in 2 CFR 200.319(d). Noncompetitive procurements can only be awarded in accordance with 2 CFR 200.320(c).

3. Methods of Procurement ALL AWARDS

The Uniform Guidance, 2 CFR 200.320, specifies methods of procurement that must be used. These methods include micro-purchase, small purchase procedures, sealed bids, competitive proposals, and noncompetitive proposals.

Generally, the micro-purchase threshold for procurement activities administered under Federal awards is not to exceed the amount set by the Federal Acquisition Regulation (FAR) at 48 CFR subpart 2.1 unless a higher threshold is requested by the non-Federal entity and approved by the cognizant agency for indirect costs.

4. Contracting with small and minority-owned and women-owned businesses and others ALL AWARDS

Grantees must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. Affirmative steps must include: placing qualified small and minority businesses and women's business enterprises on solicitation lists; assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources; dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses and women's business enterprises; establishing delivery schedules where the requirement permits which encourage participation by small and minority businesses, and women's business enterprises; using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed above (2 CFR 200.321).

5. Domestic Preferences for procurements ALL AWARDS

As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, 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 2 CFR 200.322 must be included in all subawards including all contracts and purchase orders for work or products under this award.

6. Contract Cost and price ALL AWARDS

Grantees must perform a cost or price analysis in connection with EVERY procurement

action in excess of the Simplified Acquisition threshold, including contract modifications. The method and degree of the analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point the grantee must make independent estimates BEFORE receiving bids or proposals (2 CFR 200.324). The simplified acquisition threshold means the dollar amount below which a grantee may purchase property or services using small purchase methods. The simplified acquisition threshold is set by the Federal Acquisition Regulation at 48 CFR Subpart 2.1 (Definition) and in accordance with 41 U.S.C. 1908 (2 CFR 200.88). On June 20, 2018, the Office of Management and Budget issued [Memorandum M-18-18](#), which raises the simplified acquisition threshold to \$250,000 for all recipients.

Grantees must negotiate profit as a separate element of the price for each contract in which there is no price competition and, in all cases, where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

Costs or prices based on estimated costs for contracts under NIFA awards are allowable only to the extent that costs incurred or cost estimates included in the negotiated prices would be allowable for the grantee under the Cost Principles (2 CFR 200 Subpart E).

Cost plus a percentage of construction cost method of contracting must not be used.

#### 7. NIFA review ALL AWARDS

Grantees must make available, upon request by NIFA, technical specifications on proposed procurements where NIFA believes such review is needed to ensure that the item or the service specified is the one being proposed for acquisition. This review will generally take place prior to the time the specification is incorporated into a solicitation document. However, if NIFA desires to have the review accomplished after solicitation has been developed, it may still review the specification, with such review usually limited to the technical aspects of the proposed purchase.

Grantees must make available to NIFA, upon request, pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates when:

- The grantee's procurement procedures or operation fails to comply with the procurement standards in the Uniform Guidance;
- The procurement is expected to exceed the simplified acquisition threshold and is then being awarded without competition or only one bid or offer is

- received in response to a solicitation;
- The procurement, which is expected to exceed the simplified acquisition threshold, specifies a brand name product;
- The proposed contract is more than the simplified acquisition threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or
- A proposed contract modification changes the scope of a contract or increases the contract amount by more than the simplified acquisition threshold.

Grantees are exempt from pre-procurement review if NIFA determines that its procurement systems comply with the standards in 2 CFR 200.325.

#### 8. Contract Provisions ALL AWARDS

Grantee contracts must contain the applicable provisions described in Appendix II to 2 CFR 200 – Contract provisions for non-Federal Entity Contracts Under Federal Awards.

#### ***J. Performance and Financial Monitoring and Reporting (2 CFR 200.328-330) ALL AWARDS***

The reporting requirements identified in this Policy Guide are general requirements. Each Notice of Award will contain the specific reporting requirements for that grant and additional detail on how to submit all required reports. NIFA’s monitoring of a project or activity will continue for as long as NIFA retains a financial interest in the project or activity.

NIFA’s responsibility is to ensure proper stewardship of Federal funds. NIFA will monitor grants to identify potential problems and areas where technical assistance might be needed. Progress reports, site visits, desk audits, and other required reports assist NIFA in the monitoring and oversight of grants.

NIFA requires grantees to submit progress and financial reports throughout the life of the grant. Other required reports may include annual invention utilization reports, lobbying disclosures, conflict of interest reports, audit reports and specialized programmatic reports. NIFA uses the iEdison system for submission of all reports related to inventions. Grantees should refer to their Notice of Award and award terms and conditions for all applicable reporting requirements.

Required financial and final progress reports must be submitted within the time period specified in the award documents. Failure to submit complete, accurate, and timely reports may indicate the need for closer monitoring by NIFA or may result in possible award delays or enforcement actions. Grantees must obtain the necessary reports from subrecipients. If the report due date falls on a weekend or holiday, the report is due the next business day.

#### 1. Financial Reporting ALL AWARDS

NIFA requires all grantees to submit a Federal Financial Report Form SF-425, on an

annual basis. Additionally, recipients submit an annual REEport Project Financial Report. All grantees must submit a **final** Federal Financial Report Form SF-425 within 120 days of the expiration of the award, in compliance with 2 CFR 200.344(a) and NIFA's research terms and conditions. If the non-Federal entity fails to complete the requirements, the Federal awarding agency or pass-through entity will proceed to close out the Federal award with the information available.

a. SF-425 Annual reports **ALL AWARDS**

i. General requirements:

- a) The report must be completed on a single award basis.
- b) The cash management information (lines 10(a) through 10(b)) do not have to be completed.
- c) The financial status information (lines 10(d) through 10(o) as well as line 11) on the form MUST be completed, if applicable.
- d) The awardee must report program outlays and program income on the same accounting basis (i.e., cash or accrual) that it uses in its normal accounting system.
- e) When submitting a financial report, the total matching contribution, if required, must be shown on lines 10i, 10j, and 10k.

ii. Submission

- a) Competitive grants: The report must be submitted as a PDF attachment to an email sent to [awards@usda.gov](mailto:awards@usda.gov).
- b) Capacity grants: For FY 2017 awards and later, the report must be submitted through the ezFedGrants portal. For awards prior to FY 2017, reports are submitted to [capacitygrantquestions@usda.gov](mailto:capacitygrantquestions@usda.gov).

b. Final SF-425 Financial Report **ALL AWARDS**

All grantees must submit a **final** Federal Financial Report Form SF-425 within 120 days of the expiration of the award, in compliance with 2 CFR 200.344(a). The final SF-425 report must not show any unliquidated financial obligations. If, in the unlikely event that the awardee still has valid financial obligations that remain unpaid when the SF-425 is due, it must request and justify an extension of time due to extenuating circumstance, to submit the report. After review of documentation, the ASAP account may be reopened if justified to make the final payments, as applicable.

When a final report is overdue (beyond the 120-day period following the award expiration date and not covered by an approved extension of the due date for submission of the report), the award will be placed on "manual review," which restricts the awardee's ability to draw funds. If any remaining funding is needed by the awardee, the awardee must contact AMD and request a draw providing AMD with justification and documentation to support the draw. Such draw requests will only be approved in extenuating circumstances, as determined by NIFA. Regardless of extensions given for the submission of the SF-425, funds will



not be available for any drawdowns that exceed statutory limits as well as any expiring appropriations.

c. REEport Project Financial Report **ALL AWARDS**

The REEport Project Financial Report replaced the AD-419 financial report that was previously done in CRIS webforms. It is a project level report that details all expenditures by funding source, as well as all Full Time Equivalents (FTEs), for the most recently completed Federal fiscal year. The report is used for research planning and is not an auditable document. The REEport Financial report manual contains information and requirements for the project financial reports that are submitted through REEport. Please consult the [REEport Financial Report manual](#) on NIFA's website for additional details regarding project financial reports.

- i. Competitive awards. A Project Financial Report must be submitted through the REEport system for each year the project is active. It is due on an annual basis (See [REEport Financial Report manual](#) and Notice of Award/Award terms and conditions for due dates). Failure to submit an annual REEport Project Financial Report may result in grant funds being withheld until the report has been submitted as specified.
  - a) Expenditures reported on the Project Financial Report are not auditable by NIFA.
  - b) When submitting the financial report, make sure to include all appropriate non-Federally employed staff support applied toward the project in terms of Scientist, Professional, Technical, and Clerical support.
  - c) The final REEport Project Financial Report covers only the last, most recent period of performance of the project; unlike the Final Technical Report, it does not cover the life of the project from start to end date.
- ii. Capacity awards. A REEport Project Financial Report is due annually (See [REEport Financial Report manual](#) and Notice of Award/Award terms and conditions for due dates). [Detailed instructions](#) for submitting REEport Project Financial Reports through the REEport system are available on the NIFA website.

2. Program Performance Reporting ALL AWARDS

a. Competitive awards **COMPETITIVE AWARDS**

All grant reporting must be completed using the Research, Education, and Extension project online reporting tool (REEport). Reporting consists of initial reporting, annual progress reports, and final reports. Information on [REEport](#) is available on NIFA's website and the [REEport software](#) is available on NIFA's Portal. Please consult the [REEport Guide for Project Directors manual](#) for additional details regarding reports.

- i. **Project Initiation Report.** Information collected in the REEport Project Initiation is required upon project initiation for all NEW awards in REEport. This information is requested by the appropriate NIFA Program Manager. Grantees submit data electronically. Technical questions regarding the online completion of the reports should be directed to NIFA via email at [electronic@usda.gov](mailto:electronic@usda.gov). Questions regarding report content should be directed to the programmatic contact person identified in RFA or, if the award has been made, Block 14 of the Notice of Award (Award Face Sheet).  
NIFA WILL NOT RELEASE FUNDS FOR A PROJECT UNTIL  
THE REQUIRED INFORMATION HAS BEEN RECEIVED ELECTRONICALLY BY  
REEport.
- ii. **Annual Progress Report**  
All projects must report annually through the REEport. Annual progress reports are submitted to REEport. The annual Progress Report follows the format of the government-wide Research Performance Progress Report (RPPR) and includes a summary of participants, target audiences, products (outputs), accomplishments (outcomes/impacts), and changes/problems.

Each year the award is active, the REEport system will notify the awardee or designated contact electronically of upcoming reporting requirements for REEport reports.<sup>17</sup> An annual Progress Report must be completed in accordance with instructions accompanying the request and/or those provided on the REEport data entry website referenced in item d. Reports must be submitted electronically utilizing access information (e.g., login information) provided in the REEport request for a progress report.

According to 2 CFR 200.329, annual reports must be due no later than 90 calendar days after the reporting period. Alternatively, the Federal awarding agency or pass-through entity may require annual reports before the anniversary dates of multiple year Federal awards. Generally, NIFA annual Progress Reports are due 120 calendar days after the award's anniversary date (i.e., 1 year following the month and day of which the project period begins and each year thereafter up until a final report is required). An annual Progress Report covers the most recent 1-year period. Failure to submit an annual Progress Report within 120 calendar days after the award's anniversary date may result in grant funds being withheld until the report has been submitted as specified.

For NIFA grants awarded under RFAs that allow continuations or non-competitive renewals, REEport Annual Progress Reports will be due no later than March 1 (and may be submitted up to 90 days prior).

EXAMPLES:

Grant is awarded January 1, 2021. First Progress Report is required on March 1, 2021.

Grant is awarded June 1, 2021. First Progress Report is required on March 1, 2022.

*Note: For existing awards where the Terms and Conditions specify a different submission schedule for the Annual Progress Report, those reports will still need to be provided according to terms and conditions. However, the recipient may optionally submit an additional progress report earlier in the year via email to NPL to allow for processing of continuation or non-competitive renewal.*

The following information, when applicable, must be included in the Problems/Changes section of the annual Progress Report.

1. A comparison of actual accomplishments with the goals established for the reporting period (where the output of the project can be expressed readily in numbers, a computation of the cost per unit of output should be submitted if the information is considered useful);
  2. The reasons for slippage if established goals were not met; and
  3. Additional pertinent information including, when appropriate, analysis and explanation of cost overruns or unexpectedly high unit costs.
- iii. Final Progress Report. In the month that an award is due to expire, a request notification for the Final Progress Report will be sent electronically to the award contact designated in REEport. The Final Progress Report from the recipient is required within 120 calendar days after the expiration or termination of the award (2 CFR 200.344(a)). A subrecipient must submit to the pass-through entity, no later than 90 calendar days after the period of performance end date, all final performance reports as required by the terms and conditions of the Federal award.

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<sup>17</sup> REEport does not provide reminders for the SF-425 Federal Financial Reports or other programmatic reports outside of REEport.

The Final Progress Report covers the entire period of performance of the award and must describe progress made during the entire timeframe of the project instead of covering accomplishments made only during the final reporting segment of the project. The Final Progress Report must include, when applicable, equipment purchased with any Federal funds under the award and indicate subsequent use of such equipment.

Failure to submit an acceptable Final Progress Report within 120 calendar days after the award's anniversary date may result in funds being withheld for other active NIFA grants for which the PD(s) under this award are also named, as well as prevent the award of future NIFA grants until the required report has been received in the REEport system and approved by NIFA.

- iv. **Non-Competing Continuation Progress Reports**  
Continuation awards support a specified program or project for a predetermined period of time with a statement of intention to provide additional support at a future date, provided that the grantee's performance has been satisfactory, appropriations are available for this purpose, and continued support would be in the best interest of the Federal government and the public. Progress reports are typically required to be submitted annually, or more frequently, as required by NIFA. Progress reports will be submitted through REEport (7 CFR 3430.14).
- b. **Capacity grant performance reporting CAPACITY AWARDS**  
Capacity grant recipients must submit a REEport Project Initiation and receive NIFA approval prior to expending capacity funds on a specific project. Once a project is approved, a REEport Progress Report is required annually, as well as a REEport Final Progress Report at the project's conclusion. Hatch, Hatch/Multistate, Evans-Allen, McIntire-Stennis, and Animal Health grants must submit a REEport Financial Report annually, which is due each February 1st (different than the SF-425).
  - i. **Project Initiation.** For capacity funded research, Project Initiation needs to be completed by any LGU PD who has been granted authority by their parent LGU to use a portion of its (the institution's) allocated capacity dollars (Hatch, Hatch Multistate, Evans-Allen, McIntire-Stennis, Animal Health, or Renewable Resources Extension) to perform approved research. The PD (or designated staff member; in some cases the institution allows the Site Administrator to input data on behalf of the PDs) must complete a Project Initiation in order to gain approval by NIFA to begin the research and to spend capacity dollars on that particular project. Once a project is approved and becomes active, subsequent progress reports, financial reports, and a final report must be submitted to NIFA in accordance with the below due dates.

- ii. Annual Progress Report. Due by March 1 annually for each reporting year of the project but may be submitted within 90 days leading up to March 1. Capacity reporting must follow the Federal fiscal year, so each Progress Report covers one Federal fiscal year (or a portion thereof depending on the start date of the project).

If the project begins in the midst of the Federal fiscal year, the progress reported on in the first Progress Report is the start of the project through the remainder of the Federal fiscal year. All subsequent Progress Reports cover each full Federal fiscal year.

- iii. REEport Final Progress Report (accomplishments). Due by March 1 in the fiscal year following the Federal FY in which the project ends. The Final Report may also be submitted at any time during the life of the project in order to terminate that project. However, it is important to note that the system will only accept the submission of the Final Report if the date of submission is within 120 days prior to the current end date listed on the active project. If a PD or SA wishes to submit a Final Report earlier than 120 days prior to the end date of the project, then they must submit a "Project Change" to change the end date of the project so that the proper 120 day window is created in relation to the day they want to submit the Final Report.

C. Summary Chart of Due Dates for Capacity & Non-Capacity Financial & Programmatic Reports **ALL AWARDS**

Description	Capacity Projects	Non-Capacity Projects <i>(incl. Competitive Grants)</i>
<b>Plan of Work and Annual Plan of Work Report on Accomplishments</b>	April 1  *Only for Smith-Lever 3(a) and 3(b), Smith-Lever Special Needs, Hatch, Section 1444 and 1445 (Evans-Allen), and DCPPERA	Not Applicable
<b>Project Initiation</b>	Can be submitted throughout the fiscal year, but note that NIFA requires a 30-day review period before the project can become active. Project start dates will be the start date requested or the date of NIFA approval, whichever is later. Start dates cannot be backdated.	Submit as soon as notification of award recommendation is received.
<b>REeport Annual Progress Report</b>	March 1 (May be submitted up to 120 days prior).	Submit within 120 days AFTER the anniversary of the start date; continuation awards must submit within 120 days BEFORE anniversary of the start date.
<b>REeport Final Progress Report</b>	Due by March 1 in the fiscal year following the Federal FY in which the project ends.	Within 120 calendar days after the expiration or termination of the award.
<b>REeport Financial Report</b>	February 1.	February 1 of the fiscal year AFTER the fiscal year of the expenditures being reported. For example, a new award with a start date of Oct. 1, 2017, will have a Project Financial Report due for its FY 18 expenditures on Feb. 1, 2019.

Description	Capacity Projects	Non-Capacity Projects <i>(incl. Competitive Grants)</i>
<b>SF-425 Financial Report</b>	Due December 30 annually (due annually no later than 90 days following the end of the award anniversary date). Must be submitted. FY 2016 and beyond awards submit via ezFedGrants. Grant awarded prior to FY 17 submit reports to: <a href="mailto:capacitygrantquestions@usda.gov">capacitygrantquestions@usda.gov</a> .	Due on an annual basis no later than 90 days following the end of the award anniversary date and must be submitted via email as a PDF attachment to <a href="mailto:awards@usda.gov">awards@usda.gov</a> .
<b>SF 425 Final Financial Report</b>	Due 120 days following the expiration date of the award.	No later than 120 days after the expiration date (may be submitted at any time to terminate the project).

Source: [REReport Guide for Project Directors](#)

d. Plan of Work **CAPACITY AWARDS**

The Agricultural Research, Extension, and Education Reform Act of 1998 (AREERA) requires that states submit Plans of Work (POWs) and Annual Reports of Accomplishments and Results in order to receive Federal funding under the Smith-Lever Act, the Hatch Act, and the National Agricultural Research, Extension, and Teaching Policy Act of 1977, which are the capacity funding authorities for Extension and Research activities at 1862 and 1890 LGUs. The AREERA POWs pertain only to the Smith-Lever 3(b) and (c), Hatch (including Hatch Multistate), Evans-Allen, and 1890 Extension funds.

POWs cover both research and extension activities. An integrated POW may be submitted at the state level, meaning that all 1862 and 1890 Research and Extension entities in a state may collaborate to submit a joint POW; but joint plans are no longer required.<sup>18</sup> POWs must reflect the content of the program(s) funded by Federal agricultural research and extension capacity funds and the required matching funds. POW must describe and address critical short-term, intermediate, and long-term agricultural issues in a state. The initial POW and subsequent annual updates should include resources allocated for the various

<sup>18</sup> In the Plan of Work redesign for the 2019 reporting cycle, institutions made the choice to submit combined or individual Plans of Work. If a combined plan was selected, 1862 and 1890 institutions must submit a combined plan. This choice stands for the first 5 years in the new system. Institutions will have the option to make changes in approximately 2024.

planned programs. Detailed guidance on [required content](#) and how to submit a POW can be found on the NIFA Plan of Work web page.

Completion of the POW fulfills the reporting requirement for solicitation and consideration of stakeholder input on capacity funded activities. The POW preserves an institution's autonomy and allows for programmatic flexibility within the Federal-State partnership. The "Guidelines for the State Plans of Work for Agricultural Research and Extension Formula Funds" govern the creation and maintenance of POW.

The AREERA POW reporting system is developed and monitored at NIFA by Planning, Accountability and Reporting staff (PARS), in conjunction with the Office of Information Technology (OIT). This system is used by all LGUs to input and edit data and officially submit POWs. PARS distributes policy updates and provides guidance to LGU partners in the states concerning their annual submissions of Plans of Work and Annual Reports of Accomplishments and Results (also referred to as "Annual Reports") on the NIFA [Plan of Work web page](#). Portions of the redesign process will also have impact on the REEport system and NIFA's Reporting Portal. Please see the guide on the [NIFA Plan of Work website](#) page for detailed information about the history and status of the design process, which includes descriptions of the major changes along with FAQs.

The [NIFA Reporting Portal](#) is developed and monitored by PARS, in conjunction with NIFA's OIT. This system is used by all LGUs to input and edit data and officially submit their POWs and Annual Reports.

The 5-Year Plan of Work must address capacity grants authorized under the Hatch Act (both Regular Hatch Formula Grants and Hatch Multistate Research Funds) for research activities at the 1862 land-grant institutions and the University of the District of Columbia, section 3(b) and (c) of the Smith-Lever Act (regular 3(b) and (c) and Special Needs)<sup>19</sup> for extension activities at the 1862 land-grant institutions, and sections 1444 and 1445 NARETPA for research and extension activities at the 1890 land-grant institutions, including Tuskegee University.

For 1890 land-grant institutions receiving agricultural extension and research funds under sections 1444 and 1445 of NARETPA, multistate and integrated research and extension activities should be reported under the Planned Programs section of the 5-Year Plan of Work. However, since 1890 LGUs are not

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<sup>19</sup> In the Plan of Work redesign for the 2019 reporting cycle, Smith-Lever special needs will be included in the Plan of Work.



required to expend a specified percentage of their section 1444 and 1445 funds on multistate extension and integrated research and extension activities, they should not report "Multistate Activities," or "Integrated Research and Extension Activities" in the financial report portion of the Plan of Work or Annual Report under Smith-Lever section (for multistate extension activities) or Hatch Act section (for integrated research and extension activities).

The 1862 land-grant institutions in American Samoa, Guam, Micronesia, Northern Marianas, Puerto Rico, and the U.S. Virgin Islands must report Multistate and integrated research and extension activities under the Planned Programs section of the 5-Year Plan of Work. Under Smith-Lever section, they are required to report on multistate and integrated research and extension activities in their plans of work. However, since they are not required to expend a specified percentage of Hatch Act and Smith-Lever Act formula grants on multistate extension activities and integrated research and extension activities, these 1862 land-grant institutions should not report "Multistate Activities," or "Integrated Research and Extension Activities" in the financial report portion of the Plan of Work or Annual Report.<sup>20</sup>

For POWs, NIFA will provide a review within 90 days of receipt of the document. [Approved POWs](#) are publicly available on the NIFA website. NIFA evaluates each POW to determine if it addresses agricultural issues of critical importance to the state, identifies the alignment and realignment of programs to address those critical issues, identifies the involvement of stakeholders in the planning process, gives attention to under-served and under-represented populations, indicates the level of Federal capacity funds in proportion to all other funds, provides evidence of multi-state, multi-disciplinary and multi-institutional integrated activities, and identifies the expected outcomes and impacts of the POW (71 FR 4101).

### 3. Stakeholder Input CAPACITY AWARDS

As a condition of receiving capacity funds, the Agricultural Research, Extension, and Education Reform Act of 1998 (AREERA) Section 102(c), 7 U.S.C. 7612, requires all land-grant institutions to solicit and consider input and recommendations from stakeholders concerning the use of capacity funds. The requirement became effective for all capacity funds distributed to land-grant institutions after Sept. 30, 1999. All land-grant institutions must have an established process for obtaining stakeholder input. Stakeholder input should be obtained and incorporated in determining how capacity funds are used. Stakeholder input is reported in both the

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<sup>20</sup> Section 105 of AREERA amended the Smith-Lever Act to require that a specified amount of agricultural extension formula funds be expended on multistate extension activities. Section 204 of AREERA amended the Hatch Act and Smith-Lever Act to require that a specified amount of agricultural research and extension formula funds be expended on integrated research and extension activities.

POW and its subsequent annual reports. Each institution must submit a report to NIFA by April 1 of each fiscal year with the following information regarding any changes to stakeholder input:

- Actions that were taken by the institution to seek stakeholder input and encourage their participation,
- A brief statement of the process used to identify individuals and groups who are stakeholders and to collect input from them, and
- A statement of how the institution considered the collected input.

Failing to comply with the stakeholder input requirements could result in capacity funds being withheld and redistributed. Institutions are not permitted to require stakeholders to provide input as a condition of receiving the benefits of, or participating in, the agricultural research, education, or extension programs at the recipient institution. The same information contained in the annual stakeholder input report is also a part of the state POW, when applicable (discussed below). For additional information see 7 CFR 3418.

#### 4. Subaward and Executive Compensation Reporting ALL AWARDS

The Federal Funding and Accountability Transparency Act (FFATA) of 2006 and the Digital Accountability and Transparency Act of 2014 (DATA Act) (P.L. 113-101) include reporting requirements that facilitate providing the public with information on Federal spending. Information required to be submitted pursuant to the Transparency Act is published at [www.USAspending.gov](http://www.USAspending.gov). Pursuant to FFATA and the DATA Act, additional information on subawards and executive compensation is required when a non-Federal entity is receiving or administering a NIFA grant, cooperative agreement, loan, loan guarantee, subsidy, insurance, direct appropriation, assessed and voluntary contribution or other financial assistance that authorizes the non-Federal entity to spend Federal funds (2 CFR 170.100 and 2 CFR 170.320). The requirements of the FFATA do not apply to individuals receiving NIFA grants under exceptions included in 2 CFR 170.110.

The reporting requirements of the FFATA and the DATA Act are included in the terms and conditions of the award. Grantees subject to reporting requirements must have systems in place to comply with the reporting requirements at the time of application (2 CFR 170.200). Grantees must report all actions that obligate \$30,000 or more in Federal funds. Grantees and subrecipients must report total compensation for each of the five most highly compensated individuals for the preceding fiscal year. Subrecipients are required to report total compensation for each of the five most highly compensated individuals for the preceding fiscal year if they received 80 percent or more of their annual gross revenue in Federal procurement contracts and Federal financial assistance awards and subawards or \$25,000,000 or more in annual gross revenue from the Federal procurement contracts and subcontracts and Federal financial assistance awards (2 CFR 170

Appendix A). Grantees with a gross income of under \$300,000 are exempt from reporting subaward information and total executive compensation.

All information regarding financial obligations of \$30,000 or more must be reported to <https://www.fsr.gov/> and total executive compensation must be reported as part of the SAM registration process. Grantees will be required to register with, and submit timely reports, to FSR. Recipient organizations may be required to verify the following information in FSR: organization DUNS number; name and address of organization; parent DUNS number; Assistance Listing number; Federal Award Identification Number (FAIN); Federal awarding agency.

Information must be reported by subrecipients no later than the month after the month when the funds were initially obligated (2 CFR 170 Appendix A). Subrecipients must report their executive compensation information to the primary grantee by the end of the month following the month when the subaward was made (2 CFR 170 Appendix A). Information regarding executive compensation is not required to be reported if the public has access to the same information through the periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986 (2 CFR 170.110). All required reporting pursuant to the Transparency Act is included in the award terms and conditions.

***K. Subrecipient monitoring and Management (2 CFR 200.303-333) ALL AWARDS***

Grantees are responsible for managing the day-to-day operations of grant-supported activities, subawards, and functions and activities supported by the award using their established controls and policies consistent with all NIFA requirements. Grantees that have subawards are responsible for ensuring that the subaward performance is successful and in compliance with all terms and conditions of the grant award, including ensuring that costs are necessary, reasonable, and allocable. The Uniform Guidance contains requirements regarding subrecipient monitoring and oversight. When a grantee makes a subaward to a subrecipient to carry out part of a Federal program, it is called a pass-through entity (2 CFR 200.1) and the requirements for pass-through entities are summarized below. Full requirements are contained in 2 CFR 200.331-333.

**1. Flow down of requirements from Subawards and contracts under grants ALL AWARDS**

The terms and conditions of a NIFA award apply directly to the recipient of NIFA funds. The recipient is accountable for the performance of the project, program, or activity; the appropriate expenditure of funds under the award by all parties; and all other responsibilities of the recipient, as cited in the Notice of Award. In general, the requirements that apply to the recipient, including public policy requirements, also apply to sub-recipients and contractors under grants, unless an exception is specified. NIFA further requires prior written approval by an ADO for distribution of

more than 50 percent of the total dollars of the award to a sub-recipient or when the subaward is to another Federal Agency.

2. Subrecipient and contractor determination ALL AWARDS

a. Subrecipient means a non-Federal entity that receives a subaward from a pass-through entity to carry out part of a Federal program, but does not include an individual that is a beneficiary of such program. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency (2 CFR 200.1).

b. A subaward is for the purpose of carrying out a portion of a Federal award and creates a Federal assistance relationship with the subrecipient. Characteristics that support that classification of an entity as a subrecipient include when the non-Federal entity: 1) determines who is eligible to receive what Federal assistance; has its performance measured in relation to whether objectives of a Federal program were met; 2) has responsibility for programmatic decision making; 3) is responsible for adherence to applicable Federal program requirements specified in the Federal award; and 4) in accordance with its agreement, uses the Federal funds to carry out a program for a public purpose specified in the authorizing statute, as opposed to providing goods or services for the benefit of the pass-through entity.

c. Contractor means an entity that receives a contract, as defined below.

A contract is defined as a legal instrument by which a grantee purchases property or services needed to carry out the project or program under a Federal award. The term contract does not include subawards as defined above, even if the grantees uses a contract as the legal instrument to make the subaward. A contract is for the purpose of obtaining goods and services for the grantee's own use and creates a procurement relationship with the contractor. Characteristics indicative of a procurement relationship between the grantee and a contractor are when the contractor: provides the goods and services within normal business operations; provides similar goods or services to many different purchasers; normally operates in a competitive environment; provides goods or services that are ancillary to the operation of a Federal program; and is not subject to the compliance requirements of the Federal program as a result of the agreement, though similar requirements may apply for other reasons.

d. Grantees must use their judgement in determining whether an agreement creates a subrecipient or contractor relationship. The Uniform Guidance notes that the substance of the relationship is more information than the form of the agreement. For example, while the grantee may call its subawards contracts, its relationship with the entity would be a subrecipient relationship if the characteristics match those of a subaward versus a contract.

3. Requirements for pass-through entities ALL AWARDS
- a. Ensure every subaward is clearly identified to the subrecipient as a subaward and includes the required information at the time of the subaward, and if any of the required elements change, include the change in a subsequent subaward modification. Requirement elements are listed in 2 CFR 200.332
  - b. Evaluate each subrecipients' risk of noncompliance with Federal statutes, regulations, and the terms and conditions of the subaward for purposes of determining the appropriate subrecipient monitoring plan. Factors include the subrecipient's experience with the same or similar awards; result of previous audits including whether or not the subrecipient receives a Single Audit in accordance with the Uniform Guidance, and the extent to which the same or similar subaward has been audited as a major program; whether the subrecipient has new personnel or substantially changed systems; and the extent and results of Federal Awarding agency monitoring.
  - c. Consider imposing specific subaward conditions upon a subrecipient if appropriate. In relation to indirect costs, if no approved rate exists, the pass-through entity must determine the appropriate rate in collaboration with the subrecipient, which is either:
    - 1. The negotiated indirect cost rate between the pass-through entity and the subrecipient; which can be based on a prior negotiated rate between a different PTE and the same subrecipient. If basing the rate on a previously negotiated rate, the pass-through entity is not required to collect information justifying this rate, but may elect to do so; or
    - 2. The de minimis indirect cost rate.

The pass-through entity must not require use of a de minimis indirect cost rate if the subrecipient has a Federally approved rate. Subrecipients can elect to use the cost allocation method to account for indirect costs in accordance with §200.405(d).

- d. Monitor the activities of the subrecipient as necessary to ensure that the subaward is used for authorized purposes, in compliance with Federal statutes, regulations, and the terms and conditions of the subaward; and that subaward performance goals are achieved.
- e. Depending on the pass-through entity's assessment of risk posed by the subrecipient, the following monitoring tools may be useful for the pass-through entity to ensure proper accountability and compliance with program requirements and achievement of performance goals: providing subrecipient with training and technical assistance on program related matters; performing onsite reviews of the subrecipient program operations; arranging for agreed-

upon procedures engagements. Verify that the subrecipient is audited as required in 2 CFR part 200 Subpart F. The pass-through entity is responsible for resolving audit findings specifically related to the subaward and not responsible for resolving cross-cutting findings. If a subrecipient has a current Single Audit report posted in the Federal Audit Clearinghouse and has not otherwise been excluded from receipt of Federal funding (e.g., has been debarred or suspended), the passthrough entity may rely on the subrecipient's cognizant audit agency or cognizant oversight agency to perform audit follow-up and make management decisions related to cross-cutting findings in accordance with section 2 CFR 300.513(a)(3)(vii). Such reliance does not eliminate the responsibility of the pass-through entity to issue subawards that conform to agency and award specific requirements, to manage risk through ongoing subaward monitoring, and to monitor the status of the findings that are specifically related to the subaward (2 CFR 200.332).

- f. Consider whether the results of the Subrecipients' audits, onsite reviews, or other monitoring indicate conditions that necessitate adjustment of pass-through entity's own records.
- g. Consider taking enforcement action against noncompliant subrecipient.

**L. Record retention (2 CFR 200.334-338) ALL AWARDS**

In accordance with 2 CFR 200.334, financial records, supporting documents, statistical records, and all other non-Federal entity records pertinent to a Federal award must be retained for a period of 3 years from the date of submission of the final expenditure report or, for Federal awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, respectively, as reported to NIFA.

Records may need to be retained longer than the 3-year period in certain circumstances. If any litigation, claim, or audit is started before the 3-year standard retention period expires, the records must be maintained until all litigation, claim and audit findings involving the records are resolved and final action is taken (2 CFR 200.334(a)). All records for real property and equipment purchased with Federal funds by educational institutions and non-profits must be retained for 3 years from the final disposition of the property (2 CFR 200.334(c)).

If a grantee transfers records to NIFA, the 3-year retention period no longer applies to the grantee (2 CFR 200.334(e)). For indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable, records must be retained for 3 years from the date of submission if they are submitted for negotiation. If there was no negotiation, the 3-year retention period starts at the end of the fiscal year covered by the proposal, plan, or other computation (2 CFR 200.334(f)).

If NIFA determines records need to be retained beyond the standard 3-year retention time, those records will be transferred to NIFA's custody. However, to avoid duplicate recordkeeping, NIFA may make arrangements with grantees when records are continuously needed for joint use. NIFA, the Inspector General, and the Comptroller General, or any of their duly authorized representatives have the right to access any books, documents, papers, or other records that pertain to a NIFA award when conducting audits, examinations, excerpts, transcripts, and copies. The right of these parties to access documents also includes the right to interview personnel and discuss the relevant documents.<sup>21</sup> Parties with rights to access grantee documents retain that right so long as the documents exist, even if that is beyond the 3-year retention period.

Both paper and electronic records are subject to the retention requirements. Records to be retained include electronic storage of faxes, copies of paper document, images, and other electronic media. Institutions that rely on an electronic storage system must be able to assure such a system is stable, reliable, and maintains the integrity of the information. When storing electronic images of paper documents, the system must also assure a full, complete, and accurate representation of the original, including all official approvals.

***M. Post-award compliance reviews ALL AWARDS***

NIFA conducts post-award compliance reviews to meet the agency's responsibility under the [Federal Managers' Financial Integrity Act \(FMFIA\)](#) to provide reasonable assurance that its systems of management, accounting, and administrative controls, taken as a whole, meet the objectives specified in Section 2 of the FMFIA. These objectives are intended to ensure that: 1) programs achieve their intended results; 2) resources are used consistent with agency mission; 3) programs and resources are protected from waste, fraud, and mismanagement; 4) laws and regulations are followed; and 5) reliable and timely information is obtained, maintained, reported, and used for decision making. NIFA considers several risk factors in selecting recipients for the compliance reviews. These include but are not limited to Single Audit Findings, level of funding, length of time since last review, and Office of Inspector General Hotline complaints.

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<sup>21</sup> Access to personnel will be permitted when it is timely and reasonable.

NIFA's post-award financial compliance reviews are generally performed as a site visit, but may be performed as a desk audit. The site visit is divided into two distinct sessions:

- (1) Gathering information to complete the financial compliance review; and
- (2) Providing technical assistance and outreach to our partners to successfully attain program objectives.

Recipients are provided an opportunity to respond to the findings in the draft report. A final report is issued which incorporates recipient responses.

Visit the NIFA website for [tentative schedules](#) for NIFA Compliance visits.

#### ***N. Post-award compliance reviews ALL AWARDS***

NIFA conducts post-award compliance reviews to meet the agency's responsibility under the [Federal Managers' Financial Integrity Act \(FMFIA\)](#) to provide reasonable assurance that its systems of management, accounting, and administrative controls, taken as a whole, meet the objectives specified in Section 2 of the FMFIA. These objectives are intended to ensure that: 1) programs achieve their intended results; 2) resources are used consistent with agency mission; 3) programs and resources are protected from waste, fraud, and mismanagement; 4) laws and regulations are followed; and 5) reliable and timely information is obtained, maintained, reported, and used for decision making. NIFA considers several risk factors in selecting recipients for the compliance reviews. These include but are not limited to Single Audit Findings, level of funding, length of time since last review, and Office of Inspector General Hotline complaints.

#### ***O. Remedies for non-compliance ALL AWARDS***

A grantee's failure to comply with the terms and conditions of an award may result in NIFA taking corrective actions, depending on the severity and duration of the non-compliance, to remedy the problem. The range of enforcement actions NIFA can take are outlined in the applicable statutes, regulations, and policies applicable to a specific program and identified in the Notice of Award and award terms and conditions.

Except in cases where public health or welfare concerns require immediate action or the existence of waste, fraud, and abuse is present, NIFA will afford the grantee an opportunity to take corrective action to cure the identified issue. However, even if a grantee is taking corrective action, NIFA may proactively protect the Federal government's interests, including placing special conditions on awards or precluding the grantee from obtaining future awards for a specified period, or may take action designed to prevent future non-compliance, such as closer monitoring. The Uniform Guidance, specifically 2 CFR 200.339, provides NIFA may impose one or more of the following remedies for noncompliance:

- Temporarily withhold cash payments pending correction of the deficiency.
- Disallow (that is deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance.



- Wholly or partly suspend or terminate the award.
- Initiate suspension or debarment proceedings as authorized under 2 CFR part 180 and USDA regulations, 7 CFR 3017.
- Withhold further Federal awards for the project or programs.
- Take other remedies that may be legally available.

None of the enforcement actions taken by NIFA prevent debarment and suspension as well (7 CFR 3430.60).

## 1. Modification of the Terms and Conditions of Award and Special Award Conditions

### ALL AWARDS

If a grantee has a history of poor performance, is financially unstable, has a financial and program management system that does not meet the NIFA requirements, has previously failed to comply with the terms and conditions of a NIFA award, or is otherwise irresponsible, NIFA may impose additional requirements on the grantee (2 CFR 200.208). When special award conditions are imposed, NIFA will notify the grantee in writing of the nature of the additional requirements, the reason(s) for imposing additional requirements, the nature of the corrective action the grantee needs to take, the time permitted for corrective action to be taken in, and the method by which the grantee can request reconsideration of the award terms and conditions. When the grantee corrects the condition(s) that necessitated imposing special award conditions, the special conditions will be removed. Generally, the decision to modify the terms of an award (e.g., by imposing special award conditions) is discretionary on the part of NIFA and is not appealable. 2 CFR 200.208 (Specific conditions)).

NIFA also may withdraw approval of the PD/PI or other senior/key personnel specifically referenced in the Notice of Award if there is a reasonable basis to conclude that the PD/PI and other such named senior/key personnel are no longer qualified or competent to perform. In that case, NIFA may request that the grantee designate a new PD/PI or other named senior/key personnel.

## 2. Suspension or Termination and Withholding of Support COMPETITIVE AWARDS

Grantees are required to abide by the terms and conditions of their award, as well as the applicable legislation, regulations, policy directives, and the requirements established by this Policy Guide. When grantees fail to materially comply with the terms and conditions of the award, NIFA may take certain enforcement actions in accordance with 2 CFR 200.339-343, including, but not limited to, suspending the award pending corrective action, terminating the award for cause, and withholding support. Material compliance means that the grantee, in good faith, substantially abided by the terms of the grant.

## 3. Suspension COMPETITIVE AWARDS

Generally, NIFA will suspend a grant when the grantee has not complied with the

terms and conditions of the award rather than immediately terminate the award. A suspension allows the grantee to take corrective action and remedy their non-compliance. If during the period of suspension the grantee fails to take appropriate corrective action, NIFA may choose to terminate the award. Suspension is not required before termination and immediate termination is a possible first response by NIFA.

#### 4. Termination COMPETITIVE AWARDS

NIFA has the authority to terminate an award in accordance with 2 CFR 200.340, partially or wholly. Grantees are also permitted to terminate the award if circumstances necessitate doing so. If a grantee decides to terminate a portion of the award, NIFA may determine that it is not possible to use the remaining portion for the purposes for which it was intended. In that case, NIFA will advise the grantee that it is possible to terminate the award in its entirety or to withdraw the termination request. NIFA may terminate the entire award if the original purpose cannot be fulfilled and the grantee chooses not to terminate wholly or withdraw its termination request.

Grantees should contact NIFA to determine if termination costs are allowable costs.

If a grantee seeks to terminate their award, they must send NIFA written notification setting forth the reasons for termination, and if partial termination is requested, the portion of the award to be terminated (2 CFR 200.340).

#### 5. Withholding Support COMPETITIVE AWARDS

NIFA may determine that the most appropriate course of action is to withhold support from a grantee. This means that NIFA will not make a non-competing continuation award. Support may be withheld by NIFA for a number of reasons. For example, there may not be sufficient Federal funds available to support the project; the grantee might have failed to demonstrate satisfactory progress towards achieving the objectives of the project; a grantee might have failed to meet the terms and conditions of an award; or continued funding might not be in the best interest of the Federal government. A grantee denied continued support under a non-competing continuation award for failure to comply with the award terms and conditions may appeal NIFA's decision through the appeals procedures detailed in this document and located at 7 CFR 3430.62 and 7 CFR 3430.60(d).

#### 6. Other Enforcement Actions ALL AWARDS

In addition to imposing special award terms and conditions, NIFA may take a number of other enforcement actions if a grantee is not complying with the award terms and conditions. NIFA may temporarily withhold cash payments pending the grantee's correction of the deficiency (or NIFA may take more severe action), wholly or partly suspending or terminating the current award, withholding further awards for the same project or program, and taking other legally available remedies. Suspension of an award is NOT the same as Government-wide suspension pursuant to suspension and debarment regulations.

## 7. Recovery of Funds ALL AWARDS

At any time during the life of a Federal assistance award, NIFA may identify and administratively recover funds paid to an awardee in excess of what the awardee was entitled to. If NIFA determines that there is a basis for disallowing a cost for any Federal assistance award, including capacity and competitive awards; NIFA will provide the awardee notice of their intent to disallow the cost. Disallowed costs may include funds drawn erroneously from the U.S. Treasury's Automated Standard Application for Payments (ASAP) during the life of the award; funds drawn in excess from ASAP after NIFA reviews the final SF-425, Federal Financial Report; failure to meet other award terms and conditions, including the required matching or cost sharing; disallowed costs determined during a NIFA on-site or desk review; and disallowed costs determined during the audit resolution process for reviews and audits, conducted by the USDA Office of Inspector General (OIG), Single Audit auditor (2 CFR 200.501), or any entity with statutory or regulatory authority to conduct such reviews and audits. A grantee will have an opportunity to provide NIFA with supporting documentation to justify costs disallowed by NIFA. Disallowed costs that could not be supported by the grantee will result in a debt to NIFA which will be communicated to the grantee in accordance with the applicable USDA Debt Management Regulations, 7 CFR Part 3.

## 8. Opportunities to object, hearings, and appeals COMPETITIVE AWARDS

When any enforcement action is taken, grantees are permitted an opportunity for a hearing, appeal, or other administrative proceeding as permitted by law (7 CFR 3430.62). Grantees may appeal post-award adverse administrative decisions made by NIFA including: termination, in whole or in part, for a grantee's failure to carry out the approved project in accordance with the applicable law and the terms and conditions of the award or otherwise fail to comply with the award requirements, denial of a non-competing continuation award for failure to comply with the requirements of a previous award, or a determination that an award is void or invalid. Grantees may also appeal determinations on allowability of costs (7 CFR 3430.62).

Formal notification of an adverse determination will include a statement of the grantee's rights to appeal. The grantee is then required to submit to NIFA a request for review detailing the adverse determination and providing supporting documents in accordance with the procedures identified in the notification. NIFA must receive the request for review within 60 days of the grantee's receipt of the formal notification. Extensions may be granted in extenuating circumstances (7 CFR 3430.62).

If NIFA's ultimate decision is adverse to the grantee or the request for review is rejected, the grantee may submit a request to NIFA's Deputy Director, Office of Grants and Financial Management for further review. The NIFA Deputy Director,

Office of Grants and Financial Management's decision is final (7 CFR 3430.62)

9. Effects of suspension and termination **COMPETITIVE AWARDS**

Costs to the grantee resulting from financial obligations incurred during a suspension or after termination of a Federal award are not allowable unless the Federal awarding agency expressly authorizes them in the notice of suspension or termination or subsequently. However, costs during the suspension or after termination are allowable if: the costs result from financial obligations which were properly incurred by the grantee before the effective date of the suspension or termination, are not in anticipation of it, and the costs would be allowable if the Federal award was not suspended or expired normally at the end of the period of performance in which the termination takes effect.

**P. Closeout ALL AWARDS**

NIFA's closeout procedures ensure that grantees have met all financial and technical requirements, submitted their final SF-425 Federal financial report and REEport final reports, and returned any unspent or financial unobligated balances. All closeout documents must be submitted in the 120 days following the project period's end date on the Notice of Award, unless otherwise provided. If the non-Federal entity fails to complete the requirements, the Federal awarding agency or pass-through entity will proceed to closeout with the information available.

Grantees are responsible for timely award closeout. Within 120 calendar days after the date the award expires or is terminated, the grantee must submit the Federal financial report (SF 425), performance report, and other required reports. NIFA may approve extensions of time when requested by a grantee. All required closeout reports will be identified in the award terms and conditions. If grantees are not able to comply with the established timeline, they should contact NIFA (2 CFR 200.344(a)). A subrecipient must submit to the pass-through entity, no later than 90 calendar days (or an earlier date as agreed upon by the pass-through entity and subrecipient) after the end date of the period of performance, all financial, performance, and other reports as required by the terms and conditions of the Federal award.

All financial obligations must be liquidated no later than 120 calendar days after the end of the funding period, the date of completion of the award, or as otherwise provided in the award terms and conditions. If a final audit has not been performed prior to the award closeout, NIFA retains the right to recover an appropriate amount after fully considering the recommended disallowed costs from the final audit. Closeout includes ensuring timely and accurate submission of all required reports and adjustments for amounts due to the grantee or NIFA (2 CFR 200.344(b)). NOTE: Awards in the fifth year with expiration dates in the months of JUNE, JULY, and AUGUST do not have the full 120 days after expiration to draw down funds (does not apply to AFRI awards or no-

year/X-year appropriation funded programs). NIFA uses award provisions to communicate expiring appropriation drawdown limits to grantees. Grantees with drawdown limits must make final drawdown for expenditures no later than August 25 of the fifth year. After August 25, the ASAP account will be closed and the funds will revert back to the Treasury, resulting in lost funds for grantee.

Closeout does not affect NIFA's right to disallow costs and recover funds based on later audits and financial reviews or the grantee's responsibility to report and return any funds later acquired through refunds, corrections or other transactions.

Closeout of a grant does not automatically cancel any requirements for property accountability, record retention, or financial accountability. After closeout, grantees remain obligated to return funds determined to be due as a result of an audit. Grantees are not permitted to continue to draw down funds once the closeout period ends. NIFA will de-obligate any remaining balances (2 CFR 200.345; GAO 12-360).

Failing to submit timely and accurate closeout documents may affect future funding to the organization. NIFA may impose sanctions on institutions that fail to correct recurring reporting problems. Such sanctions may include, but are not limited to, corrective actions, removal of authorities, and/or delay or withholding of further awards to the project or program.

Grantees must submit a final financial report, final technical report, and final invention statement and certification within 120 calendar days of award completion. Also within this 120 day period, grantees must liquidate all financial obligations incurred under the award (GAO 12- 360). Grantees should refer to their Notice of Award to determine if alternative deadlines apply. The Final Progress Report must be submitted through the REEport system. All other closeout documents should be submitted to OGFm as PDFs.

When a recipient or subrecipient completes all closeout requirements, NIFA will promptly complete all closeout actions for awards. NIFA will make every effort to complete closeout actions no later than one year after the end of the period of performance unless otherwise directed by authorizing statutes. Closeout actions include Federal awarding agency actions in the grants management and payment systems. If the non-Federal entity does not submit all reports in accordance with 2 CFR 200.344 and the terms and conditions of the award, NIFA must proceed to close out with the information available within one year of the period of performance end date. If the recipient does not submit all reports in accordance with this section within one year of the period of performance end date, **NIFA must report the recipient's material failure to comply with the terms and conditions of the award with the OMB-designated integrity and performance system (currently FAPIIS). NIFA may also pursue other enforcement actions per 2 CFR 200.339.**

NIFA must also comply with the Grants Oversight and New Efficiency (GONE Act) in closing out expired grants. Signed into law in January 2016, the goal of the GONE Act is to close

out expired grants. The GONE Act requires the Office of Management and Budget (OMB) to instruct each agency, in coordination with the Department of Health and Human Services (HHS), to submit to Congress and HHS by December 31 of the first calendar year beginning after this Act's enactment a report that:

- Lists each Federal grant award held by such agency
- Provides the total number of Federal grant awards, including the number of grants by time period of expiration, the number with zero dollar balances, and the number with undisbursed balances
- Describes the challenges leading to delays in grant closeout
- Explains, for the 30 oldest Federal grant awards, why each has not been closed out

The covered grants are those within an agency's cash payment management system that have been expired for two or more years and have not been closed out. No later than 1 year after the head of an agency submits its report, the agency head will notify HHS whether the agency has closed out the covered grants discussed in its report. HHS is required to compile this information and provide it to Congress.

1. Final Federal Financial Report ALL AWARDS

a. Final financial reports (SF-425) **ALL AWARDS**

Final financial reports (SF-425) are required for all terminated, expired, or transferred grants. Final financial reports must be submitted within 120 days of the expiration of the award. An additional extension may be given, on a case by case basis, in extenuating circumstances if there is adequate justification/documentation. Any requests for an extension of time should include a provisional report, an anticipated submission date, a justification for late submission, and a justification for the extenuating circumstances. All final financial reports are submitted to NIFA AMD in accordance with applicable terms and conditions. Reporting requirements will be identified in the award terms and conditions. (7 CFR 3430.56).

b. Overdue final financial reports **ALL AWARDS**

Grantees with overdue final financial reports needing to draw funds from their account must contact AMD. If no extension was previously granted, the grantee must provide justification and documentation to NIFA to continue to withdraw funds. NIFA will approve withdrawals only under extenuating circumstances (7 CFR 3430.56).

For capacity awards processed using ezFedGrants, the system will not allow grantee funds to be released if the grantee fails to submit the required annual and/or final Federal Financial Report (SF-425).

c. Revised final financial reports **ALL AWARDS**

If a grantee is required to submit a revised final financial report, NIFA

requires, at a minimum, the following information:

- Description of why the revision was necessary and an explanation of internal controls implemented to preclude similar occurrences in the future.
- All charges must be otherwise allowable costs.
- Availability of funds for use, including whether unobligated carry over is available to cover the charges.

d. Post-closeout **ALL AWARDS**

If after the award is closed out NIFA owes the grantee for allowable, reimbursable costs, such payments will be made promptly. Similarly, the grantee is required to promptly refund any balances of unobligated cash it is not permitted to retain. OMB Circular A-129 governs delinquent debts. After all financial reports are received by NIFA, NIFA will settle with the grantee any adjustments to the Federal share of cost.

2. Unobligated Balances and Actual Expenditures **ALL AWARDS**

When an annual financial report is submitted and an automatic carryover of unobligated balances is not authorized, NIFA will compare the total of any unobligated balance shown minus the funds awarded for the current budget period. If the funds available exceed the NIFA share of the approved budget for the current budget period, NIFA may revise the current Notice of Award to authorize the grantee to spend the excess funds for an additional approved purpose or offset the current award or a subsequent award by an amount representing some or all of the excess.

3. Expired Appropriations Accounts **ALL AWARDS**

Grantee access to accounts will expire at the end of the closeout period. ASAP automatically suspends access to accounts 121 days after the period of performance ends.<sup>22</sup> Expired appropriations accounts remain open for 5 years to allow for necessary adjustments to be made by NIFA. At the time of expiration, funds are no longer available for use by the grantee. NIFA's future use of unobligated funds is determined by law. Annual budget authority lasts for up to one fiscal year. Multi- year authority lasts for longer periods, and no-year authority lasts until the funds are expended for their designated purpose.

NIFA utilizes the Department of Treasury Dormant Account report as a tool for closing old accounts that will no longer have disbursements. A Dormant Account is defined as having no activity in over 2 years. All unliquidated financial obligations are subject to 31 USC Sec. 1554 (Audit, control, and reporting).

**Q. Continuity of Operations ALL AWARDS**

In response to requirements for major system contingency planning as part of the Federal government's security management process, the USDA has formulated and is

implementing a *Disaster Recovery and Business Resumption Plan*.<sup>23</sup> Many departments within the Federal government work with the Department of Homeland Security to ensure that Federal business operations and services to the public will sustain as short an interruption as possible in the event of adverse weather conditions, fire, and acts of terror against the Federal government.

NIFA has established a contingency plan that allows key NIFA personnel the ability to communicate with the land-grant institutions and all other grantees and continue business operations in the event of business disruption due to a natural or unnatural disaster. The information provided to NIFA on the Key Contacts form is maintained for regular business use and is also stored offsite as part of the contingency plan.

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<sup>22</sup> Awards in the fifth year with expiration dates in the months of MAY, JUNE, JULY, and AUGUST do not have the full 120 days after expiration to draw down (does not apply to AFRI awards or no-year/X-year appropriation funded programs).

<sup>23</sup> The Computer Security Act of 1987, OMB Circular A-130, Appendix III, and PDD 63 require contingency planning for major systems as part of the security management process. Specifically, these mandates require that contingency planning be conducted for each major system. NIST Publication 800-34, *Contingency Planning Guide for Information Technology Systems*, provides additional guidance that will be used to establish USDA's IT Contingency Program.