



GULF COAST ECOSYSTEM RESTORATION COUNCIL

GENERAL TERMS AND CONDITIONS FOR FINANCIAL ASSISTANCE AWARDS

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PREFACE

This document sets out the general terms and conditions (GTCs) generally applicable to Gulf Coast Ecosystem Restoration Council (RESTORE Council or Council) financial assistance awards for the purpose of carrying out projects under the *Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012* (33 U.S.C. § 1321(t) and note) (RESTORE Act or Act). These GTCs apply to Council awards made under both the Council-Selected Restoration Component (authorized under 33 U.S.C. § 1321(t)(2)) and the Spill Impact Component (authorized under 33 U.S.C. § 1321(t)(3)) of the Act.

A. CERTIFICATIONS

At a minimum, the “recipient” (as defined in 2 CFR Part 200) must comply with the certifications and requirements set forth in 31 CFR § 34.802, “Certifications” (certifications submitted annually through the System for Award Management (SAM) and form SF-424D, or equivalent, as applicable), and any required Council-specific certifications. Other certifications may be required by 2 CFR part 200 and other applicable laws as needed. Certifications must be signed by an authorized official of the entity receiving grant funds who can legally bind the organization or entity, and who has oversight for the administration and use of those funds.

B. STATUTORY AND REGULATORY REQUIREMENTS

The recipient and each subrecipient must, in addition to the assurances made as part of an award application, comply and require each of its contractors and subcontractors engaged in the implementation of the award project to comply, with the RESTORE Act and all other applicable statutes, regulations, executive orders (EOs) and federal government guidance, including without limitation Office of Management and Budget (OMB) circulars, the OMB *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (2 CFR part 200) (Uniform Guidance) as adopted by the Council at 2 CFR § 5900.101, the RESTORE Act regulations at 31 CFR part 34, these Council GTCs, any other incorporated terms and conditions, and applicable approved applications.

This award is subject to the laws and regulations of the United States. Any inconsistency or conflict in the terms and conditions specified in the award will be resolved according to the following order of precedence: public laws; regulations; applicable notices published in the *Federal Register*; EOs; OMB circulars; these GTCs; and specific award conditions. A specific award condition may amend or take precedence over these GTCs if so provided by these GTCs or approved in writing by the Council Grants Office (Grants Office).

C. PROGRAMMATIC REQUIREMENTS

1. Performance Reports

The following requirements supplement 2 C.F.R § 200.329, “Monitoring and reporting program performance.”

- a. **Annual Performance Report.** The recipient or subrecipient must submit Performance Reports annually through the Council’s electronic grants management system (eGMS)¹, unless otherwise specified in the award terms or the recipient makes alternative arrangements with the Grants Office. Recipients must include information required by 2 CFR § 200.329, supplemented with the following:
 - i. Metrics updates;
 - ii. Data analyses updates, as needed;
 - iii. An update of progress toward performance goals and objectives, including any significant findings or events;
 - iv. An explanation of how expenditures in the reporting cycle are related to and support the implementation and progress of the activity;
 - v. A report on any adaptive management strategies implemented to address identified operational, legal, regulatory, budgetary and/or ecological risks, and/or any public controversies;
 - vi. An update on leveraged funding;
 - vii. Observational Data Plan. If required under the award, the recipient must provide a report on the Observational Data Plan through the “performance narrative.” The report must include any updates needed to address enclosed reviewer comments and to include any plan details listed as “Not available (N/A)” or “To be determined (TBD),” or that are in other ways left unspecified in the current version of the Observational Data Plan. Updated plan details will include specific start and end dates that accurately reflect the period of observational data collection. For all plan details provided via updated Observational Data Plans, the recipient will make any corresponding updates to metrics details in the eGMS. The recipient must deliver updated plans to the Council at least annually until all comments are addressed and all “N/A,” “TBD,” or unspecified items are provided, and at any time to correct any material inaccuracies until all information is final. The first updated plan must include time frames for providing any missing information. Updated plans provided to the Council must conform to the structure of the template provided on the Council website.
- b. **Final Performance Report.** The Final Performance Report summarizing the activities and findings of the entire award period should use the same format as the annual Performance Reports. If required by the award, a final Observational Data Closeout Report, along with approved ISO metadata as described below in Terms C.2.a and C.2.d,. The final performance report submitted by the recipient must be due no later than 120 calendar days after the period of performance. A subrecipient must submit a final performance report to a pass-through entity no later than 90 calendar days after the conclusion of the period of performance as required by 2 CFR § 200.329.

¹ As of October 1, 2024 the Council’s Grant Management System consists of the GrantSolutions shared federal service and the Council’s Programmatic Information Platform for Ecosystem Restoration (PIPER).

2. Observational Data Management and Delivery and Final Project GIS Files

- a. **Data sharing.** If required under the award, environmental data compiled, collected or created under the federal award must be reported to the Council with the annual Performance Report. In accordance with 2 CFR 200 and applicable state laws, data must be made publicly available in a timely manner, free of charge or at a minimal cost to the user that is no more than the cost of distribution to the user, except where limited by law, regulation, policy, or national security requirements. Whenever practicable, data are to be made available in a form that would permit further analysis or reuse, i.e., data must be encoded in a machine-readable format, using existing open format standards; and data must be sufficiently documented, using open metadata standards, in order to enable users to independently read and understand the data. Data should undergo quality control (QC) and a description of the QC process, and results should be referenced in the metadata. Publicly available ISO-compliant metadata record(s) of the project data must be provided and approved prior to close-out of the award.
- b. **Author statement.** Data produced under the federal award and made available to the public must be accompanied by the following statement: “The [report, presentation, video, etc.] and all associated data and related items of information were prepared by [recipient name or subrecipient name, as applicable] under Award No. [number] from the Gulf Coast Ecosystem Restoration Council (RESTORE Council). The data, statements, findings, conclusions, and recommendations are those of the author(s) and do not necessarily reflect any determinations, views, or policies of the RESTORE Council.”
- c. **Data citation.** Publications based on data, and new products derived from source data, must cite the data used according to the conventions of the publisher and use Digital Object Identifiers (DOIs) if available. All data and derived products that are used to support the conclusions of a publication must be made available in a form that permits verification and reproducibility of the results.
- d. **Final Project Geographic Information System (GIS) files.** Final updated project boundaries, footprints, and features should be provided to the Council no later than the submission of the final Performance Report. These files must be geospatial in nature (acceptable formats are SHP, GDB, or DGN) and contain projection information and complete ISO-compliant metadata.

3. Management and Access to Data and Publications, Videos, Signage, Acknowledgment of Sponsorship, and use of Council Logo

- a. **In General.** The recipient acknowledges and understands that information and data contained in applications for financial assistance, as well as information and data contained in financial, performance and other reports submitted by recipients, may be used by the Council in conducting its operations, including reviews and evaluations of its financial assistance programs. For this purpose, recipient information and data may be accessed, reviewed and evaluated by Council employees, other federal employees, federal agents and contractors and/or by non-federal personnel, all of whom enter into or are otherwise subject to appropriate confidentiality and nondisclosure agreements covering the use of such information as determined by the Council. Recipients are expected to support program

reviews and evaluations by submitting required financial and performance information and data in an accurate and timely manner and by cooperating with the Council and external program evaluators. In accordance with 2 CFR § 200.303(e), recipients are reminded that they must, *inter alia*, take reasonable measures to safeguard protected personally identifiable information and other confidential or sensitive personal or business information created or obtained relating to an award.

- b. **Publication of results or findings.** Publication of results or findings in appropriate professional journals and production of video or other media is encouraged as an important method of recording, reporting and otherwise disseminating information and expanding public access to federally-funded projects (*e.g.*, scientific research).
- c. **Copy of publication materials to the Council Programs Office.** Upon request, recipients are required to submit a copy of any publication materials, including but not limited to print, recorded or Internet materials, to the Council Programs Office.
- d. **Acknowledgement of sponsorship.** When releasing information related to a funded project, recipient or subrecipient, as applicable, must include a statement that the project or effort undertaken was, or is, sponsored by the Council. Any signage produced with funds from an award or informing the public about the activities funded in whole or in part by an award should include a statement of sponsorship. The Council logo may also be used to communicate sponsorship, however, the Council has discretion to review the use of Council intellectual property as needed.
- e. **Disclaimer.** Recipients and subrecipients, as applicable, are responsible for assuring that every publication of material based on, developed under, or otherwise produced under an award, including scientific articles or papers appearing in scientific, technical or professional journals, contains the following disclaimer or other disclaimer approved in writing by the Grants Office:

This [report, presentation, video, etc.] and all associated data and related items of information were prepared by [recipient name or subrecipient name, as applicable] using federal funds under Award No. [number] from the Gulf Coast Ecosystem Restoration Council (RESTORE Council). The data, statements, findings, conclusions, and recommendations are those of the author(s) and do not necessarily reflect any determinations, views or policies of the RESTORE Council.

D. FINANCIAL REQUIREMENTS

1. Financial Reports

The following requirements supplement 2 CFR § 200.328, “Financial reporting.”

- a. **Annual Financial Report.** The recipient must submit Financial Reports (Form SF-425 or any successor form) annually through the Council’s eGMS unless otherwise specified in the award terms. Recipients must use the SF-425 “Federal Financial Report” or a successor form. Any expenditures

related to non-federal cost share must be included in the recipient Share section of the SF-425. The details of the report must be submitted through the eGMS and must include the following information:

- i. Cumulative expenditures through the end of the reporting period for each object class category, which may include budget line items and/or amounts to subrecipients and contractors as determined by the specific conditions of the award.

b. Final Financial Report. The recipient’s Final Financial Report summarizing the expenditures of the entire award period must be submitted in the eGMS and use the same format as the annual financial report. The SF-425 must be marked as “Final.” The final report is due 120 days after the end of the Period of Performance.

2. Award Payments

The following requirements supplement 2 CFR § 200.305.

- a. **Use of ASAP.** Unless otherwise provided for in the award terms, payments under each award will be made using the U.S. Department of the Treasury’s Automated Standard Application for Payment ([ASAP](#)) system, which allows for preauthorized electronic funds transfers. Awards paid under the ASAP system will contain a specific award condition, clause, or provision describing any controls or withdrawal limits set in the ASAP system. Recipients enrolled in the ASAP system are not required to submit a “Request for Advance or Reimbursement” (Form SF-270 or successor form) in order to receive payments relating to their awards. Pre-approval in writing by the Grants Office prior to requesting payments may be required for recipients that are determined by the Council to be in a higher risk category or noncompliant (*see* 2 CFR § 200.206, “Federal Agency Review of Risk Posed by Applicants” and 2 CFR § 200.208, “Specific Conditions”).
 1. In order to receive payments under ASAP, recipients are required to enroll with the U.S. Department of the Treasury (Treasury), Financial Management Service, Regional Financial Centers, which enables them to use the on-line and Voice Response System (VRS) method of withdrawing funds from their ASAP established accounts.
 2. The following information will be required to make withdrawals under ASAP:
 - i. ASAP account number, i.e., the federal award number found on the cover sheet of the award;
 - ii. Agency Location Code (ALC).
- b. Funds advanced but not disbursed in a timely manner, including accrued interest thereon, must be promptly returned to the Council. The Council Grants Office may periodically request documentation from the recipient verifying that the elapsed time between the transfer of funds and disbursement has been minimized.
- c. **Alternate system to ASAP.** Where the use of an alternative system other than ASAP is provided for

in the award terms, requests for payment will be submitted to the Grants Office. Form SF-3881, “ACH Vendor/Miscellaneous Payment Enrollment Form,” must be completed before the first award payment can be made via a “Request for Advance or Reimbursement” (Form SF-270) request.

1. The Council Award Number must be included on all payment-related correspondence, information, and forms submitted in an alternate system to ASAP

3. Non-Federal Cost Sharing

- a. If the budget for an award includes non-federal funds to be provided as a cost share by the recipient or a subrecipient, then the federal and non-federal project expenditures will be calculated *pro rata* for actual allowable costs, unless otherwise approved in advance in writing by the Grants Office; provided, however, that in no event shall the federal share exceed the total federal dollar amount authorized by the award.
- b. Expenditures of committed cost sharing will be documented with each Federal Financial Report. The recipient must create and maintain records that clearly indicate the source, amount and timing of all non-federal contributions in order to support cost sharing and facilitate reviews and audits. See 2 CFR § 200.306, “Cost sharing” for additional requirements regarding cost sharing.

4. Program Income

Program income is defined at 2 CFR § 200.1. The following requirements supplement 2 CFR § 200.307, “Program Income.” Restore Council recipients will apply program income to the total cost of the award using the additional method described at 2 CFR § 200.307(b)(2). Program income must be used for the original purpose of the Federal award.

- a. The recipient must maintain detailed records sufficient to account for the receipt, obligation, and expenditure of grant funds including the tracking of program income. All program income must be documented in the Federal Financial Report submitted to the Council for the reporting period in which the income was earned.
- b. Program income must be included in the recipient’s approved budget and tracked in accordance with the requirements in 31 CFR § 34.803(b).
- c. The Council will amend the award at closeout to reflect the reported program income during the period of performance.

5. Budget Revisions and Transfer of Funds Among Categories

- a. **Budget revisions.** Requests for revisions to the approved budget must be made in accordance with 2 CFR § 200.308, “Revision of budget and program plans” and submitted in writing to the Grants Office through the eGMS. The Grants Office will make the final determination on such requests and

notify the recipient thereof in writing. Recipients must request prior approval for transfers of funds between projects within program awards. See 2 CFR § 200.308(i).

- b. **Transfers between direct and indirect cost categories.** The recipient is not authorized at any time to transfer amounts budgeted for direct costs to the indirect costs line item or vice versa without the prior written approval of the Grants Office.

6. Indirect (Facilities and Administrative) (F&A) Costs

- a. **General.** The following requirements for facilities and administrative (F&A, or indirect) costs supplement 2 CFR § 200.414, “Indirect Costs” and 2 CFR part 200, Subpart E, “Cost Principles.”
- b. **Three percent administrative cost cap.** Indirect costs of recipients are subject to the three percent (3%) cap on administrative costs specified in the RESTORE Act at 33 U.S.C. § 1321(t)(1)(B)(iii) and the implementing regulations at 31 CFR § 34.204. The three percent cap applies only to recipients and does not flow down to subrecipients.
- c. **Limitation on excess indirect costs.** Excess indirect costs may not be used to offset unallowable direct costs.
- d. **Indirect cost rate agreement procedures.** Indirect costs charged must be consistent with the indirect cost rate agreement negotiated between the recipient and its cognizant agency (but subject to Section D.6.b above), which is the federal agency that is responsible for reviewing, negotiating, and approving cost allocation plans or indirect cost proposals, as defined at 2 CFR § 200.1, and must be included in the recipient’s budget. Subject to Section D.6.b above, the Council will accept approved indirect cost rates unless otherwise authorized by a federal statute or regulation, or if the requirements for using a rate different from the negotiated rate set out at 2 CFR § 200.414(c) are met.
 - i. **Procedures when the Council is not the cognizant agency for indirect costs.** When the Council is not the oversight or cognizant federal agency, the recipient shall provide the Council Grants Office through the eGMS with a copy of a negotiated rate agreement or a copy of the transmittal letter submitted to the cognizant or oversight federal agency requesting a negotiated rate agreement.
 - ii. **Procedures when the Council is the cognizant agency for indirect costs.** For those organizations for which the Council is cognizant or has oversight, the Council or its designee will either negotiate a fixed rate with carry-forward provisions for the recipient or, in some instances, will limit its review to evaluating the procedures described in the recipient’s cost allocation plan. Indirect cost rates and cost allocation methodology reviews are subject to future audits to determine actual indirect costs.
 - Within 90 days after the award start date, the recipient shall submit documentation (indirect cost proposal, cost allocation plan, etc.) necessary to perform the review. The recipient shall provide the Grants Office with a copy of the transmittal letter. All documentation should be submitted to the Grants Office at grantsoffice@restorethegulf.gov. If the recipient fails to submit the required documentation within 90 calendar days after the award start date, the

Grants Office may amend the award to preclude the recovery of any indirect costs under the award. If the Grants Office, oversight, or cognizant federal agency determines that there is a finding of sufficient cause to excuse the recipient's delay in submitting the documentation, an extension of the 90-day due date may be approved by the Grants Office.

- The recipient may use the fixed rate proposed in the indirect cost plan until such time as the Council provides a response to the submitted plan. Actual indirect costs must be calculated annually, and adjustments made through the carry-forward provision used in calculating the following year's rate. This calculation of actual indirect costs and the carry-forward provision is subject to audit. Indirect cost rate proposals must be submitted annually. A recipient that has previously established an indirect cost rate must submit a new indirect cost proposal to the cognizant agency within six months after the close of each of the recipient's fiscal years.
- e. **Maximum amount of indirect costs.** The maximum dollar amount of allocable indirect costs for which the Council will reimburse the recipient shall be the lesser of:
- i. The line item amount for the federal share of indirect costs contained in the approved award budget, including all budget revisions approved in writing by the Grants Office; or
 - ii. The federal share of the total indirect costs allocable to the award based on the indirect cost rate approved by a cognizant or oversight federal agency for indirect costs and applicable to the period in which the cost was incurred, in accordance with 2 CFR part 200 Appendix III, C.7., provided that the rate is approved in writing on or before the award end date, and subject to the three percent (3%) cap on administrative costs set forth in Section D.6.b above.

7. Incurring Costs or Obligating Federal Funds Outside of the Period of Performance

The following requirements supplement 2 CFR §§ 200.1, definition of "Period of Performance," and 200.309, "Modifications to Period of Performance;" and 200.458, "Pre-Award Costs." The recipient must use funds obligated and disbursed under the award only during the period of performance specified in the award document.

- a. **Pre-award costs.** Pre-award costs are those incurred prior to the effective date of an award directly pursuant to the negotiation and in anticipation of the award, where such costs are necessary for efficient and timely performance of the scope of work. Such costs are allowable only to the extent that they would have been allowable if after the date of the award and only with the written approval of the Grants Office. Written approval is not required when (1) the recipient is low or medium risk; (2) pre-award costs are requested only for preparation of the award application; and (3) the amount requested is less than \$15,000.

In a request for approval, the recipient must at a minimum, provide the following documentation:

- i. *Summary* of pre-award costs for which approval is requested, including amount in each applicable budget object class; and
- ii. *Invoice* for each pre-award cost item procured by the recipient or billed by a subrecipient or contractor; or
- iii. *Other supporting documentation* for each pre-award cost item that the recipient incurred directly (for example, time sheets to support personnel costs).

Documentation must clearly designate each item of cost for which approval is requested and show a clear relationship to the approved scope of work and budget of the award.

- b. **No obligation for prospective funding.** The Council has no obligation to provide any prospective funding. Any amendment of an award to increase funding or to extend the period of performance is at the sole discretion of the Council.
- c. **Incurring costs or obligating funds beyond the period of performance.** The recipient shall not incur costs or obligate funds for any purpose pertaining to the operation of the project, program, or activities beyond the period of performance, i.e., the total estimated time interval between the start of an initial federal award and the planned end date, which may include one or more funded portions or budget periods.
 - i. All activities supported through the award must occur and be completed during the approved period of performance, whether funded directly or through a subaward or subcontract; and all obligated costs must be liquidated within 120 days following the end date of the period of performance.
 - ii. Costs solely associated with closeout activities may be authorized for a period of not to exceed 120 days following the end of the period of performance. Close-out activities are limited to the preparation of final progress, financial, and required project audit reports unless otherwise approved in writing by the Grants Office. The Grants Office may approve extensions of the 120-day closeout period upon a request by the recipient as provided in 2 CFR § 200.344, “Closeout.”
- d. **Extensions of the period of performance.** Unless otherwise authorized in 2 CFR § 200.309 or a specific award condition, any extension of the period of performance is prohibited unless authorized by the Grants Office in writing. Verbal or written assurances of funding from anyone other than written authorization from the Grants Office shall not constitute authority to obligate funds for programmatic activities beyond the end of the period of performance.

8. Non-duplication of Funding

The Council will not pay for costs that are funded by other sources, including without limitation the Oil Spill Liability Trust Fund. The recipient must immediately notify the Grants Office in writing if other funding is received from any source to support or fund any portion of the scope of work incorporated into an award.

If the recipient is authorized to make subawards, the recipient will not use RESTORE Act funds to make subawards to fund any activities for which claims were filed with the Oil Spill Liability Trust Fund in connection with the *Deepwater Horizon* oil spill after July 6, 2012. *See also* 2 CFR § 200.403(f), “Factors affecting allowability of costs.”

E. CONFLICT OF INTEREST, CODE OF CONDUCT AND INTEGRITY

1. Conflict of Interest Policy

- a. Pursuant to the certification provided through the SAM, in Form SF-424D, paragraph 7, as applicable, or the equivalent, the recipient must maintain written standards of conduct to establish safeguards in order to prohibit interested parties (as defined in Section E.1.b below) from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest or personal gain in the administration of an award. In addition, in accordance with 2 CFR § 200.112, “Conflict of interest,” the recipient must disclose in writing to the Council any potential conflict of interest that its or any pass-through entity’s interested parties may have or appear to have.
- b. A conflict of interest generally exists when an interested party participates in a matter that has a direct and predictable effect on the interested party’s personal or financial interests. A financial interest may include employment, stock ownership, a creditor or debtor relationship, or prospective employment with the organization selected or to be selected for a contract or subaward. A conflict may also exist where there is an appearance that an interested party’s objectivity in performing its, his or her responsibilities under the project is impaired. For example, an appearance of impairment of objectivity may result from an organizational conflict where, because of other activities or relationships with other persons or entities, an interested party is unable to render impartial assistance, services, or advice to the recipient, a participant in the project, or to the federal government. Additionally, a conflict of interest may result from non-financial gain to an interested party, such as benefit to reputation or prestige in a professional field. For purposes of these GTCs, an “interested party” includes without limitation any officer, employee or member of the board of directors or other governing or managing board of a recipient, including any other party that advises, approves, recommends, or otherwise participates in the business decisions of the recipient, such as agents, advisors, consultants, attorneys, accountants and shareholders. This also includes immediate family and other persons directly connected to an interested party by law or through a personal or business relationship.
- c. **Subaward-related conflicts of interest.** The recipient must maintain written standards of conduct governing the performance of its interested parties involved in executing this award and the administration of subawards.

2. Integrity

In addition to 2 CFR § 200.113, “Mandatory disclosures,” the recipient must immediately report any indication of fraud, waste, abuse or potential criminal activity pertaining to grant funds to the Council, Treasury, and the Treasury Inspector General in accordance with the requirements in 31 CFR § 34.803(a) and Appendix XII to Part 200, Title 2.

F. SUBTIER MATTERS

1. RESTORE Act’s Limitation on Transfers for Subawards

For Council-Selected Comprehensive Component awards, the RESTORE Act (33 U.S.C. 1321(t)(2)(E)(ii)(III)) requires pre-award and annual reporting on any subaward to a nongovernmental entity that exceeds 10 percent of the total amount provided to the recipient for the applicable project or program. In accordance with item (bb) of this Limitation on Transfers provision, an announcement must be posted in the *Federal Register* and delivered to designated Congressional committees that includes the name of each subrecipient and the amount and purpose of each grant or cooperative agreement. The recipient may not enter into such a subaward with a nongovernmental entity until 30 days after the required notifications have been completed. The Council will notify the recipient in writing when the notifications have been completed. In addition, the recipient must provide the Council with information required to comply with the annual reporting requirement in item (cc) of the Limitation on Transfers provision.

2. Subrecipient Selection

In accordance with 2 CFR 200.308(f)(6), the recipient will provide the Council with the following information for any subaward activities not proposed in the application and approved in the Federal award.

- a. *Name and Universal Entity Identifier (UEI) of Subrecipient.* Identify the name of the subrecipient and provide the subrecipient’s UEI
- b. *Period of Performance.* Specify the beginning and ending dates of the subaward.
- c. *Scope of Work.* Describe the specific services/tasks to be performed by the subrecipient and relate them to the accomplishment of project or program objectives. Objectives should be clearly defined.
- d. Total Subaward Amount.

The recipient should not send subaward agreements to the Council unless specifically requested. The Council’s review of the above-listed information is for the limited purpose of ensuring compliance with the terms and conditions of the award and 2 CFR Part 200.

3. Subrecipient Agreements

The following requirements supplement 2 CFR part 200.331, “Subrecipient Monitoring and Management,” 2 CFR § 200.101(b)(2), “Applicability,” and 31 CFR § 34.803(c), “Conditions.”

Agreement between recipient and subrecipient. Prior to disbursing funds to a subrecipient, the recipient must execute a legally-binding written agreement with the entity receiving the subaward in accordance with the requirements in 31 CFR § 34.803(c). The written agreement shall:

- a. Extend all applicable program, statutory, regulatory, and other requirements to the subrecipient;
- b. Include a requirement that the contractor or subrecipient retain all records in compliance with 2 CFR § 200.334; and
- c. Include a requirement that the subrecipient make available to the Council, the Treasury OIG, and the U.S. Government Accountability Office (GAO) any documents, papers or other records, including electronic records, of the subrecipient that are pertinent to this award, in order to make audits, investigations, examinations, excerpts, transcripts, and copies of such documents. This right also includes timely and reasonable access to the subrecipient’s personnel for the purpose of interview and discussion related to such documents. This right of access shall continue as long as records are required to be retained.

4. Contractor Procurement

The Restore Council will not require prior approval for contractor procurement if the certifications regarding procurement included with the application continue to be true, and the Council has determined that the recipient has a low organizational risk. When these conditions are not met, the recipient will provide the Council with documentation that identifies the contractor, describes the work to be performed, and demonstrates that the procurement was made in compliance with recipient procurement statutes and applicable provisions of 2 CFR Part 200 prior to expenditure of funds for contractual support not specified in the application. The following information will be provided for the procurements that are subject to this requirement.

- a. *Name and Universal Entity Identifier (UEI) of Contractor.* Identify the name of the contractor and provide the contractor’s UEI.
- b. *Procurement Method.* Identify the method of procuring the contract. If the contract is sole source, include a detailed justification as to why this organization is the only one able to perform the services or how this selection is otherwise in conformance with applicable contracting rules related to non-competitive awards.
- c. *Type of contract awarded* (e.g., time and materials, fixed, etc).
- d. *Period of Performance.* Specify the beginning and ending dates of the contract.
- e. *Scope of Work.* Describe the specific services/tasks to be performed by the contractor and relate them to the accomplishment of project or program objectives. Deliverables should be clearly defined.
- f. *Method of Accountability.* Describe how the progress and performance of the contractor will be monitored during and on close of the period of performance. Identify who will be responsible for supervising the contract.
- g. *Contract Amount.* At a minimum, provide the total amount of the contract.

The recipient should not send contract or other procurement documents to the Council unless specifically requested. The Council’s review of the above listed information is for the limited purpose of ensuring compliance with 2 CFR Part 200.

5. Subaward and/or Contract to a Federal Agency

- a. The recipient, subrecipient, contractor, and/or subcontractor shall not sub-award or sub-contract any part of the approved project to any federal department, agency, or instrumentality without the prior written approval of the Grants Office.
- b. Requests for approval of such action must be submitted in writing to the Grants Office through the eGMS. The Grants Office will notify the recipient in writing of the final determination.

G. ENVIRONMENTAL COMPLIANCE

1. Scope and Procedure

The Council addresses federal environmental laws and other requirements (e.g., those listed in Section 2 below) prior to approving funding under the Council-Selected Restoration Component. Under the Spill Impact Component, the Council addresses such laws and requirements at the award stage. For both Components, such laws and requirements not triggered at the funding approval stage must be addressed at the award stage, as applicable. Recipients must provide the Council with documentation demonstrating compliance with such laws and requirements prior to the release of implementation funding under an award. Prior to undertaking any data collection or other ground-disturbing activities associated with engineering and design (e.g., geotechnical sampling), the recipient or subrecipient, as applicable, must obtain any required authorizations/permit(s). Documentation of compliance with any applicable laws must be made available to the Grants Office upon request.

If a recipient is permitted to make any subawards, the recipient must include all of the applicable statutes and regulations, listed in Section 2 below in any agreement with a subrecipient and require the subrecipient to comply with each provision and to notify the recipient if the subrecipient becomes aware of any impact on the environment that was not noted in the recipient's approved application package.

2. Applicable Law

Following is a list of environmental laws and regulations that may be applicable to the activities contained in applications for financial assistance under either the Council-Selected Restoration Component or the Spill Impact Component. Compliance with these laws and regulations may be addressed with Specific Award Conditions included with the award agreement, depending on the circumstances of the funded activity. Recipients are required to identify any known impacts their projects may have under these laws and to cooperate with the Council on compliance with these laws.

- a. National Environmental Policy Act (42 U.S.C. § 4321 *et seq.*)
- b. Endangered Species Act (16 U.S.C. § 1531 *et seq.*)
- c. Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. § 1801 *et seq.*)
- d. Migratory Bird Treaty Act (16 U.S.C. §§ 703-712), Bald and Golden Eagle Protection Act (16 U.S.C. § 668 *et seq.*)
- e. National Historic Preservation Act of 1966, as amended (54 U.S.C. § 300101 *et seq.*) and the Advisory Council on Historic Preservation Guidelines (36 CFR part 800)
- f. Clean Air Act (42 U.S.C. § 7401 *et seq.*), Federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq.*) (Clean Water Act)

- g. Flood Disaster Protection Act (42 U.S.C. § 4001 *et seq.*)
- h. Coastal Zone Management Act (16 U.S.C. § 1451 *et seq.*)
- i. Coastal Barriers Resources Act (16 U.S.C. § 3501 *et seq.*)
- j. Wild and Scenic Rivers Act (16 U.S.C. § 1271 *et seq.*)
- k. Safe Drinking Water Act (42 U.S.C. § 300f *et seq.*)
- l. Resource Conservation and Recovery Act (42 U.S.C. § 6901 *et seq.*)
- m. Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, more commonly known as Superfund) (42 U.S.C. § 9601 *et seq.*) and the Community Environmental Response Facilitation Act (42 U.S.C. § 9601 note *et seq.*)
- n. Rivers and Harbors Act (33 U.S.C. § 407)
- o. Marine Protection, Research and Sanctuaries Act (Pub. L. 92-532, as amended), National Marine Sanctuaries Act (16 U.S.C. § 1431 *et seq.*)
- p. Farmland Protection Policy Act (7 U.S.C. § 4201 *et seq.*)
- q. Fish and Wildlife Coordination Act (16 U.S.C. § 661 *et seq.*)

I. NON-DISCRIMINATION REQUIREMENTS

No person in the United States shall, on the ground of race, color, national origin, handicap, age, religion, or sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving federal financial assistance. The recipient must comply with the non-discrimination requirements below,

1. Statutory Provisions

- a. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d *et seq.*) and any Council regulations and policies promulgated pursuant to its authority prohibit discrimination on the grounds of race, color, or national origin under programs or activities receiving federal financial assistance.
- b. Title IX of the Education Amendments of 1972 (20 U.S.C. §§ 1681 *et seq.*) prohibits discrimination on the basis of sex under federally assisted education programs or activities.
- c. The Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101 *et seq.*) (ADA) prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by State and local governments or instrumentalities or agencies thereto, as well as public or private entities that provide public transportation.

- d. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), and any Council regulations and policies promulgated pursuant to its authority prohibit discrimination on the basis of disability under any program or activity receiving or benefiting from federal assistance.
- e. Revised ADA Standards for Accessible Design for Construction Awards revised regulations implementing Title II of the ADA (28 CFR part 35) and Title III of the ADA (28 CFR part 36) which adopted new enforceable accessibility standards called the “2010 ADA Standards for Accessible Design” (2010 Standards). All new construction and alteration projects shall comply with the 2010 Standards.
- f. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 *et seq.*), and any Council regulations and policies promulgated pursuant to its authority prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance.
- g. "The Architectural Barriers Act of 1968 (42 U.S.C. 4151 *et seq.*) which addresses physically handicapped persons' ready access to, and use of, buildings and facilities for which federal funds are used in design, construction, or alteration.
- h. Any other applicable non-discrimination law(s).

2. Title VII Exemption for Religious Organizations

Generally, Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000e *et seq.*) provides that it shall be an unlawful employment practice for an employer to discharge any individual or otherwise to discriminate against an individual with respect to compensation, terms, conditions, or privileges of employment because of such individual's race, color, religion, sex, or national origin. However, 42 U.S.C. § 2000e-1(a), expressly exempts from the prohibition against discrimination on the basis of religion, a religious corporation, association, educational institution, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities.

J. NATIONAL POLICY REQUIREMENTS

1. Prohibition against Assignment by the Recipient

The recipient shall not transfer, pledge, hypothecate, mortgage, or otherwise assign the award, any interest therein, or any claim arising thereunder (collectively, “Transfer”) to any party or parties, including without limitation any bank, trust company or other financing or financial institution, without the express prior written approval of the Grants Office. Any purported Transfer without such express prior written approval shall be null and void and of no force or effect.

2. Disclaimer Provisions

- a. The United States expressly disclaims any and all responsibility or liability to the recipient or third persons for any actions of the recipient or third persons resulting in death, bodily injury, personal or property damage, or any other damage, loss, judgment, cost, expense or liability in connection with or resulting in any way from the performance of this award or any subaward, contract, or subcontract under this award.
- b. Acceptance of this award by the recipient does not in any way establish or constitute, nor shall it be construed as establishing or constituting, an agency relationship between the United States and the recipient.

3. Criminal and Prohibited Activities

- a. The Program Fraud Civil Remedies Act (31 U.S.C. § 3801 *et seq.*), provides for the imposition of civil penalties against persons who make false, fictitious or fraudulent claims to the federal government for money (including money representing grants, loans or other benefits).
- b. The False Claims Amendments Act and the False Statements Act (18 U.S.C. §§ 287 and 1001, respectively), provide that whoever makes or presents any false, fictitious or fraudulent statement, representation or claim against the United States shall be subject to imprisonment of not more than five years and shall be subject to a fine in the amount provided by 18 U.S.C. § 287.
- c. The Civil False Claims Act (31 U.S.C. § 3729 *et seq.*), provides that suits can be brought by the government, or a person on behalf of the government, for false claims made under federal assistance programs.
- d. The Copeland “Anti-Kickback” Act (18 U.S.C. § 874), prohibits a person or organization engaged in a federally supported project from enticing an employee working on the project from giving up a part of his or her compensation under an employment contract. The Copeland “Anti-Kickback” Act also applies to contractors and subcontractors pursuant to 40 U.S.C. § 3145.
- e. The recipient and any subrecipients must promptly refer to the Grants Office any credible evidence that a principal, employee, agent, subrecipient, contractor, subcontractor, or other person has, in connection with funds under this award -- (1) submitted a claim that violates the False Claims Act; or (2) committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct.

4. Political Activities

The recipient must comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7321-7326), which limit the political activities of employees whose principal employment activities are funded in whole or in part with federal funds.

5. Foreign Travel

- a. The recipient may not use funds from an award for travel outside of the United States without the prior written approval of the Grants Office. The recipient shall comply with the provisions of the Fly America Act (49 U.S.C. § 40118). The implementing regulations of the Fly America Act are found at 41 CFR §§ 301-10.131 through 301-10.143.
- b. The Fly America Act requires that federal travelers and others performing U.S. Government-financed air travel must use U.S. flag air carriers, to the extent that service by such carriers is available. Foreign air carriers may be used only in specific instances, such as when a U.S. flag air carrier is unavailable, or use of U.S. flag air carrier service will not accomplish the agency’s mission.
- c. An exception to the requirement to fly U.S. flag carriers is transportation provided under a bilateral or multilateral air transport agreement, to which the United States Government and the government of a foreign country are parties, and which the Department of Transportation has determined meets the requirements of the Fly America Act pursuant to 49 U.S.C. § 40118(b). The United States Government has entered into bilateral/multilateral “Open Skies Agreements” (U.S. Government Procured Transportation) that allow federally-funded transportation services for travel and cargo movements to use foreign air carriers under certain circumstances. There are multiple “Open Skies Agreements” currently in effect. For more information about the current bilateral and multilateral agreements, visit the U.S. [General Services Administration website](#).²
- d. If a foreign air carrier is anticipated to be used for any portion of travel under a Council financial assistance award, the recipient must obtain prior written approval from the Grants Office. When requesting such approval, the recipient must provide a justification in accordance with guidance provided by 41 CFR § 301-10.143, which requires the recipient to provide the Grants Office with the following: name; dates of travel; origin and destination of travel; detailed itinerary of travel; name of the air carrier and flight number for each leg of the trip; and a statement explaining why the recipient meets one of the exceptions to the regulations. If the use of a foreign air carrier is pursuant to a bilateral agreement, the recipient must provide the Grants Officer with a copy of the agreement or a citation to the official agreement available on the GSA website. The Grants Office shall make the final determination and notify the recipient in writing. Failure to adhere to the provisions of the Fly America Act will result in the recipient not being reimbursed for any transportation costs for which the recipient improperly used a foreign air carrier.

6. Research Involving Human Subjects

- a. The Council follows the federal government-wide Common Rule for human subject research found at 45 CFR part 46, “Protection of Human Subjects.” All proposed research involving human subjects must be conducted in accordance with this rule. No research involving human subjects is permitted under an award unless expressly authorized by a Specific Award Condition, or otherwise in writing by the Grants Officer.
- b. Federal policy defines a human subject as a living individual about whom an investigator conducting research obtains (1) data through intervention or interaction with the individual, or (2) identifiable

² GSA Fly America Act website - [Link to the GSA Fly America Act website](#), verified 11/10/2021.

private information. Research means a systematic investigation, including development, testing or evaluation, designed to develop or contribute to general knowledge.

- c. The recipient must maintain appropriate policies and procedures for the protection of human subjects. If it becomes evident that human subjects may be involved in an award project, the recipient shall submit appropriate documentation to the Grants Office for approval by the appropriate Council officials. This documentation may include:
 - i. Documentation establishing approval of the project by an institutional review board (IRB) approved for federal-wide use under Department of Health and Human Services guidelines (*see also* 45 CFR § 46.103);
 - ii. Documentation to support an exemption for the project under 45 CFR § 46.104;
 - iii. Documentation to support deferral for an exemption or IRB review under 45 CFR § 46.118;
 - iv. Documentation of IRB approval of any modification to a prior approved protocol or to an informed consent form.
- d. No work involving human subjects may be undertaken or conducted, or costs incurred and/or charged for human subject research, until the appropriate documentation is approved in writing by the Grants Officer. Notwithstanding this prohibition, work may be initiated or costs incurred and/or charged to the project solely for protocol or instrument development related to human subject research.

7. Federal Employee Expenses

Federal agencies are generally barred from accepting funds from a recipient to pay transportation, travel or other expenses for any federal employee. Use of award funds (federal or non-federal) or the recipient's provision of in-kind goods or services, for the purposes of transportation, travel or any other expenses for any federal employee may raise appropriation augmentation issues. In addition, Council policy prohibits the acceptance of gifts, including travel payments for federal employees, from recipients or applicants, regardless of the source.

Therefore, before award funds may be used by federal employees, recipients must submit requests for approval of such action to the Grants Office, who will notify the recipient in writing of the final determination.

8. Homeland Security Presidential Directive 12

If the performance of a grant award requires recipient personnel to have routine access to federally controlled facilities and/or federally-controlled information systems (for purpose of this term "routine access" is defined as access for more than 180 days), such personnel must undergo the Council's personal identity verification credential process. Any items or services delivered under a financial assistance award must comply with the Council personal identity verification procedures that implement Homeland Security Presidential Directive 12, "Policy for a Common Identification Standard for Federal Employees

and Contractors,” Federal Information Processing Standards Publication (FIPS PUB) Number 201, and OMB Memorandum M-05-24. The recipient must ensure that its subrecipients and contractors (at all tiers) performing work under an award comply with the requirements contained in this term. The Grants Office may delay final payment under an award if a subrecipient or contractor fails to comply with the requirements provided below. The recipient must insert the following term in all subawards and contracts when a subrecipient or contractor is required to have routine physical access to a federally controlled facility or routine access to a federally-controlled information system:

- a. The subrecipient or contractor must comply with the Council personal identity verification procedures identified in the subaward or contract that implement Homeland Security Presidential Directive 12 (HSPD-12), Office of Management and Budget (OMB) Guidance M-05-24, as amended, and federal Information Processing Standards Publication (FIPS PUB) Number 201, as amended, for all employees under this subaward or contract who require routine physical access to a federally-controlled facility or routine access to a federally-controlled information system.
- b. The subrecipient or contractor must account for all forms of federal government-provided identification issued to the subrecipient or contractor employees in connection with performance under this subaward or contract. The subrecipient or contractor must return such identification to the issuing agency upon the earliest to occur of the following, unless otherwise determined in writing by the Council: (1) When no longer needed for subaward or contract performance; (2) Upon completion of the subrecipient or contractor employee’s employment; or (3) Upon subaward or contract completion or termination.

9. Compliance with Department of Commerce Bureau of Industry and Security Export Administration Regulations

If an award involves access to export-controlled items (generally “dual-use” items with both a military and commercial application), the recipient is responsible for compliance with all applicable laws and regulations regarding export-controlled items, including the Export Administration Regulation’s deemed exports and reexports provisions at 15 CFR § 730 *et seq.* The recipient must establish and maintain effective export compliance procedures at applicable Council and non-Council facilities throughout performance of the award. At a minimum, these export compliance procedures must include adequate controls of physical, verbal, visual, and electronic access to export-controlled items, including by foreign nationals. As applicable, recipient personnel and associates at Council sites must be informed of any procedures to identify and protect export-controlled items. The recipient must include this section of these GTCs, including this subparagraph, in all lower-tier transactions (subawards, contracts, and subcontracts) under any award that may involve access to export-controlled items.

10. Federal Financial Assistance Planning During a Funding Hiatus or Government Shutdown

This term sets forth initial guidance that will be implemented for awards in the event of a lapse in appropriations, or a government shutdown. The Grants Office may issue further guidance prior to an anticipated shutdown.

- a. Unless there is an actual rescission of funds for specific grant obligations, recipients of federal financial assistance awards for which funds have been obligated generally will be able to continue to perform and incur allowable expenses under the award during a funding hiatus. Recipients are advised that ongoing activities by federal employees involved in grant administration (including payment processing) or similar operational and administrative work cannot continue when there is a funding lapse. Therefore, there may be delays, including payment processing delays, in the event of a shutdown.
- b. All award actions may be delayed during a government shutdown; if it appears that a recipient's performance under a grant or cooperative agreement will require Council involvement, direction, approval or clearance during the period of a possible government shutdown, the Program Officer or the Grants Office, as appropriate, may attempt to provide such involvement, direction, approval or clearance prior to the shutdown or advise recipients that such involvement, direction, approval or clearance will not be forthcoming during the shutdown. Accordingly, recipients whose ability to withdraw funds is subject to prior Council approval, which in general are recipients that have been designated high risk, recipients of construction awards, or that are otherwise limited to reimbursements or subject to Council review, will be able draw funds down from the relevant Automatic Standard Application for Payment (ASAP) account only if written Council approval is given and coded into ASAP prior to any government shutdown or closure. This limitation may not be lifted during a government shutdown. Recipients should plan to work with the Grants Office to request prior approvals in advance of a shutdown wherever possible. Recipients whose authority to draw down award funds is restricted may decide to suspend work until the government reopens.
- c. The ASAP system may remain operational during a government shutdown. As applicable, recipients that do not require Council approval to draw down advance funds from their ASAP accounts may be able to do so during a shutdown. The 30-day limitation on the drawdown of advance funds will apply notwithstanding a government shutdown and funds advanced and held for more than 30 days shall be returned with interest.

11. The Trafficking Victims Protection Act of 2000 (22 U.S.C. § 7104(g)), as amended, and the implementing regulations at 2 CFR part 175

The Trafficking Victims Protection Act of 2000 authorizes termination of financial assistance provided to a private entity, without penalty to the federal government, if a recipient engages in certain activities related to trafficking in persons. The Council incorporates by reference the award term required by 2 CFR § 175.15(b).

12. Federal Funding Accountability and Transparency

- a. **Searchable website requirements.** The federal Funding Accountability and Transparency Act of 2006 (FFATA), as amended, 31 U.S.C. § 6101 *note*, requires information on federal awards (federal financial assistance and expenditures) be made available to the public via a single, searchable website.

This information is available at the [USA Spending website](#).³ See 2 CFR § 200.212. Recipients must include the following required data elements in their award applications:

- Name of entity receiving award;
- Award amount;
- Transaction type, funding agency, Assistance Listings Number, and descriptive award title;
- Location of entity, primary location of performance (City/State/Congressional District/Country); and
- Unique identifier of entity.

b. **Subawards and Executive Compensation.** Recipients must file reports on subawards and executive compensation as required in the following Award Term from Appendix A to 2 CFR part 170.

I. Reporting Subawards and Executive Compensation

a. Reporting of first-tier subawards.

1. **Applicability.** Unless you are exempt as provided in paragraph d. of this award term, you must report each action that equals or exceeds \$30,000 in federal funds for a subaward to a recipient or federal agency (see definitions in paragraph e. of this award term).

2. **Where and when to report.**

i. The recipient or federal agency must report each obligating action described in paragraph a.1. of this award term to www.SAM.gov effective March 1, 2025.

ii. For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)

3. **What to report.** You must report the information about each obligating action that the submission instructions posted at www.SAM.gov effective March 1, 2025.

c. Reporting total compensation of recipient executives for recipients.

1. **Applicability and what to report.** You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if—

i. The total federal funding authorized to date under this federal award equals or exceeds \$30,000 as defined in 2 CFR 170.300;

ii. in the preceding fiscal year, you received— (A) 80 percent or more of your annual gross revenues from federal procurement contracts (and subcontracts) and federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.300 (and subawards), and (B) \$25,000,000 or more in annual gross revenues from federal procurement contracts (and subcontracts) and federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and,

³ USASpending.gov website - www.USASpending.gov, verified 11/10/2021.

iii. The public does not have access to information about the compensation of the executives through 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. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at [http:// www.sec.gov/answers/excomp.htm](http://www.sec.gov/answers/excomp.htm).)

2. Where and when to report. You must report executive total compensation described in paragraph b.1. of this award term:

- i. As part of your registration profile at <https://www.sam.gov>.
- ii. By the end of the month following the month in which this award is made, and annually thereafter.

d. Reporting of Total Compensation of Subrecipient Executives.

1. Applicability and what to report. Unless you are exempt as provided in paragraph d. of this award term, for each first-tier recipient subrecipient under this award, you shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if—

- i. in the subrecipient's preceding fiscal year, the subrecipient received— (A) 80 percent or more of its annual gross revenues from federal procurement contracts (and subcontracts) and federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.300 (and subawards) and, (B) \$25,000,000 or more in annual gross revenues from federal procurement contracts (and subcontracts), and federal financial assistance subject to the Transparency Act (and subawards); and
- ii. The public does not have access to information about the compensation of the executives through 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. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at [http:// www.sec.gov/answers/excomp.htm](http://www.sec.gov/answers/excomp.htm).)

2. Where and when to report. You must report subrecipient executive total compensation described in paragraph c.1. of this award term:

- i. To the recipient.
- ii. By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (i.e., between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.

e. Exemptions. If, in the previous tax year, you had gross income, from all sources, under \$300,000, you are exempt from the requirements to report:

- i. Subawards, and
- ii. The total compensation of the five most highly compensated executives of any subrecipient.

e. Definitions. For purposes of this award term:

1. *Federal Agency* means a federal agency as defined at 5 U.S.C. 551(1) and further clarified by 5 U.S.C. 552(f).
2. *Recipient* means all of the following, as defined in 2 CFR part 25: i. A Governmental organization, which is a State, local government, or Indian tribe; ii. A foreign public entity; iii. A domestic or foreign nonprofit organization; and, iv. A domestic or foreign for-profit organization
3. *Executive* means officers, managing partners, or any other employees in management positions.
4. *Subaward*: i. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient. ii. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see 2 CFR 200.331. A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.
5. *Subrecipient* means a recipient or federal agency that: i. Receives a subaward from you (the recipient) under this award; and ii. Is accountable to you for the use of the federal funds provided by the subaward.
6. *Total compensation* means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)).

13. System for Award Management (SAM) and Universal Identifier requirements.

Recipients must comply with the following Award Term from Appendix A to 2 CFR part 25.

I. System for Award Management (SAM) and Universal Identifier Requirements

A. Requirement for System for Award Management

Unless you are exempted from this requirement under 2 CFR 25.110, you as the recipient must maintain current information in the SAM. This includes information on your immediate and highest-level owner and subsidiaries, as well as on all of your predecessors that have been awarded a federal contract or federal financial assistance within the last three years, if applicable, until you submit the final financial report required under this federal award or receive the final payment, whichever is later. This requires that you review and update the information at least annually after the initial registration, and more frequently if required by changes in your information or another federal award term.

A. Requirement for Unique Entity Identifier

If you are authorized to make subawards under this federal award, you:

1. Must notify potential subrecipients that no entity (see definition in paragraph C of this award term) may receive a subaward from you until the entity has provided its Unique Entity Identifier to you.

2. May not make a subaward to an entity unless the entity has provided its Unique Entity Identifier to you. Subrecipients are not required to obtain an active SAM registration, but must obtain a Unique Entity Identifier.

C. Definitions

For purposes of this term:

1. System for Award Management (SAM) means the federal repository into which a recipient must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the SAM internet site (currently at [https:// www.sam.gov](https://www.sam.gov)).
2. Unique Entity Identifier means the identifier assigned by SAM to uniquely identify business entities.
3. Entity includes recipients as defined at 2 CFR 200.1 and also includes all of the following, for purposes of this part:
 - a. A foreign organization;
 - b. A foreign public entity;
 - c. A domestic for-profit organization; and
 - d. A domestic or foreign for-profit organization; and
 - e. A federal agency.
4. Subaward has the meaning given in 2 CFR 200.1.
5. Subrecipient has the meaning given in 2 CFR 200.1.

14. Reporting of Matters Related to Recipient Integrity and Performance.

In addition to the requirements 2 CFR § 200.303, “Internal controls,” recipients are required to comply with Appendix XII to 2 CFR part 200.

A. Reporting of Matters Related to Recipient Integrity and Performance

1. General Reporting Requirement

If the total value of your currently active grants, cooperative agreements, and procurement contracts from all federal awarding agencies exceeds \$10,000,000 for any period of time during the period of performance of this federal award, then you as the recipient during that period of time must maintain the currency of information reported to the System for Award Management (SAM) that is made available in the designated integrity and performance system (currently the Federal Awardee Performance and Integrity Information System (FAPIIS)) about civil, criminal, or administrative proceedings described in paragraph 2 of this award term and condition. This is a statutory requirement under section 872 of Public Law 110-417, as amended (41 U.S.C. 2313). As required by section 3010 of Public Law 111-212, all information posted in the designated integrity and performance system on or after April 15, 2011, except past performance reviews required for federal procurement contracts, will be publicly available.

2. Proceedings About Which You Must Report

Submit the information required about each proceeding that:

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

3. Reporting Procedures

Enter in the SAM Entity Management area the information that SAM requires about each proceeding described in paragraph 2 of this award term and condition. You do not need to submit the information a second time under assistance awards that you received if you already provided the information through SAM because you were required to do so under federal procurement contracts that you were awarded.

4. Reporting Frequency

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

5. Definitions- For purposes of this award term and condition:

- a. *Administrative proceeding* means a non-judicial process that is adjudicatory in nature in order to make a determination of fault or liability (e.g., Securities and Exchange Commission Administrative proceedings, Civilian Board of Contract Appeals proceedings, and Armed Services Board of Contract Appeals proceedings). This includes proceedings at the federal and State level but only in connection with performance of a federal contract or grant. It does not include audits, site visits, corrective plans, or inspection of deliverables.
- b. *Conviction*, for purposes of this award term and condition, means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere.

c. *Total value of currently active grants, cooperative agreements, and procurement contracts includes—*

- (1) Only the federal share of the funding under any federal award with a recipient cost share or match; and
- (2) The value of all expected funding increments under a federal award and options, even if not yet exercised.

19. Buy-America Preferences

Recipients of funds for projects involving “infrastructure”(as defined in the *Build America, Buy America Act* (Pub. L. 117-58 § 70912) are hereby encouraged to use and cause to be used, to the greatest extent practicable, iron and aluminum as well as steel, cement, and other manufactured products produced in the United States in every contract, subcontract, purchase order, or subaward that is chargeable under an award.

K. AMENDMENTS

Amendments to an award must be requested in writing. The recipient must provide an explanation for the need for the amendment. The Council reserves the right to amend the terms of the award when required by law or regulation.

L. RECORDS RETENTION

The following requirements supplement 2 CFR § 200.334-338, “Record Retention Requirements.” For the purposes of a RESTORE Council award, the term “records” includes but is not limited to:

- a. Copies of all contracts and all documents related to a contract, including the Request for Proposals (RFP), all proposals/bids received, all meeting minutes or other documentation of the evaluation and selection of contractors, any disclosed conflicts of interest regarding a contract, all signed conflict of interest forms (if applicable), all conflict of interest and other procurement rules governing a particular contract, and any bid protests;
- b. Copies of all subawards, including the funding opportunity announcement or equivalent, all applications received, all meeting minutes or other documentation of the evaluation and selection of subrecipients, any disclosed conflicts of interest regarding a subaward, and all signed conflict of interest forms (if applicable);
- c. All documentation of site visits, reports, audits, and other monitoring of contractors (vendors) and subrecipients (if applicable);
- d. All financial and accounting records, including records of disbursements to contractors (vendors) and subrecipients, and documentation of the allowability of Administrative Costs (as defined at

- 31 CFR § 34.204) charged to an award;
- e. All supporting documentation for the performance outcome and other information reported on the recipient’s Financial Reports and Performance Reports; and
 - f. Any reports, publications, and data sets from any research conducted under an award.

M. AUDITS

1. General Audit Requirements

- a. Under the GAO’s authorities (31 U.S.C. § 701 *et seq.*) and the Inspector General Act of 1978, as amended (5 U.S.C. App. 3, § 1 *et seq.*), an audit of an award may be conducted at any time. The Treasury Office of Inspector General (OIG), GAO, and the Council are authorized to audit Council awards. *See* section 1608 of the RESTORE Act and 31 CFR §§ 34.406, 34.508, and 34.805.
- b. The OIG (as specified in the RESTORE Act) or any of his or her duly authorized representatives, the GAO, and the Council shall have timely and unrestricted access to any pertinent books, documents, papers, and records of the recipient, whether written, printed, recorded, produced, or reproduced by or in any mechanical, electronic, digital or any other process or medium, in order to make audits, inspections, reproductions, excerpts, transcripts, or other examinations as authorized by law.
- c. If the OIG requires a program audit on a Council award, the OIG will customarily make the arrangements to audit the award, whether the audit is performed by OIG personnel, an independent accountant under contract with the Council, or any other federal, state, or local audit entity.
- d. The OIG, the GAO, and the Council shall have the right during normal business hours to conduct announced and unannounced onsite and offsite physical visits of recipients and their subrecipients and contractors corresponding to the duration of their records retention obligation for this award.

2. Organization-Wide, Program-Specific, and Project Audits

- a. Organization-wide or program-specific audits must be performed in accordance with the Single Audit Act Amendments of 1996, as implemented by 2 CFR part 200, subpart F, “Audit Requirements.” Recipients that are subject to the provisions of 2 CFR part 200, subpart F and that expend \$1,000,000 or more in a year in federal awards must have an audit conducted for that year in accordance with the requirements contained in 2 CFR part 200, subpart F. A copy of the audit shall be submitted electronically to the Federal Audit Clearinghouse website, which is operated by the Bureau of the Census. If it is necessary to submit by paper, the address for submission is:

Federal Audit Clearinghouse
Bureau of the Census
1201 E. 10th Street

Jeffersonville, IN 47132

- b. Except for the provisions for biennial audits provided in paragraphs 1 and 2 of this subsection b, audits required must be performed annually. Any biennial audit must cover both years within the biennial period.
 - 1. A State, local government, or Indian tribe that is required by constitution or statute, in effect on January 1, 1987, to undergo its audits less frequently than annually, is permitted to undergo its audits pursuant to 2 CFR part 200 biennially. This requirement shall remain in effect for the biennial period.
 - 2. Any nonprofit organization that had biennial audits for all biennial periods ending between July 1, 1992, and January 1, 1995, is permitted to undergo its audits pursuant to 2 CFR part 200 biennially. See also 2 CFR § 200.504, “Frequency of audits.”
- c. Council programs may have specific audit guidelines that will be incorporated into the award and may be found in the annual Compliance Supplement, which is Appendix XI to 2 CFR part 200 and is available on OMB’s website. When the Council does not have a program-specific audit guide available for the program, the auditor will follow the requirements for a program-specific audit as described in 2 CFR § 200.507, “Program-specific audits.” The recipient may include a line item in the budget for the cost of the audit for approval. A copy of the program-specific audit shall be submitted to the Council the Grants Office and Treasury OIG at OIGCounsel@oig.treas.gov, or if email is unavailable to the OIG at:

Treasury Office of Inspector General
1500 Pennsylvania Ave. NW
Washington, DC 20220

3. Audit Resolution Process

- a. An audit of the award may result in the disallowance of costs incurred by the recipient and the establishment of a debt (account receivable) due to the Council. For this reason, the non-federal entity should take seriously its responsibility to respond to all audit findings and recommendations with adequate explanations and supporting evidence whenever audit results are disputed.
- b. A recipient whose award is audited has the following opportunities to dispute the proposed disallowance of costs and the establishment of a debt:
 - 1. Unless the Inspector General determines otherwise, the recipient has 30 days after the date of the transmittal of the draft audit report to submit written comments and documentary evidence.

2. The recipient has 30 days after the date of the transmittal of the final audit report to submit written comments and documentary evidence.
3. The Council will review the documentary evidence submitted by the recipient and notify the recipient of the results in an *Audit Resolution Determination Letter*. The recipient has 30 days after the date of receipt of the *Audit Resolution Determination Letter* to submit a written appeal. The appeal is the last opportunity for the recipient to submit written comments and documentary evidence that dispute the validity of the audit resolution determination.
4. An appeal of the Audit Resolution Determination does not prevent the establishment of the audit-related debt nor does it prevent the accrual of interest on the debt. If the Audit Resolution Determination is overruled or modified on appeal, appropriate corrective action will be taken retroactively. An appeal will stay the offset of funds owed by the auditee against funds due to the auditee.
5. The Council will review the recipient’s appeal and notify the recipient of the results in an *Appeal Determination Letter*. After the opportunity to appeal has expired or after the appeal determination has been rendered, the Council will not accept any further documentary evidence from the recipient. No other administrative appeals to the Council are available; the decision set forth in an *Appeal Determination Letter* is final and binding upon the recipient.

N. REMEDIES FOR NONCOMPLIANCE

The following requirements supplement 2 CFR §§ 200.339-343, “Remedies for noncompliance” and 2 CFR § 200.208, “Specific conditions.”

- a. **Noncompliance process.** In the event the Council has determined that an instance of non-compliance may have occurred, the Council will notify the recipient in writing, providing details regarding the instance of noncompliance, and indicating the remedy that the Council proposes to pursue. The recipient will then have 30 calendar days to respond and provide information and documentation contesting the Council’s proposed determination or suggesting an alternative remedy. The Council will consider information provided by the recipient and issue a final determination in writing, which will state the Council’s final findings regarding noncompliance and the remedy to be imposed.
- b. **RESTORE Act-specific remedy for noncompliance.**
 1. In addition to remedies available under 2 CFR §§ 200.339-.343, additional remedies for noncompliance may apply under the RESTORE Act, 33 USC 33 U.S.C. §§ 1321(t)(1)(G) and (H), and *see* 31 CFR § 34.804, “Noncompliance.”
 2. If the Council determines that a recipient has materially violated the terms of an award, the Council, in coordination with Treasury, will make no additional funds available to the recipient from any part of the Trust Fund until the recipient corrects the violation.

- c. **Immediate effect.** In extraordinary circumstances, the Council may require that any of the remedies above take effect immediately upon notice in writing to the recipient. In such cases, the recipient may contest the Council’s determination or suggest an alternative remedy in writing to the Council, and the Council will issue a final determination.
- d. **OIG referral.** Instead of, or in addition to, the remedies listed above, the Council may refer the noncompliance to the Treasury OIG for investigation or audit, pursuant to 31 CFR § 34.805. The Council will refer all allegations of fraud, waste, or abuse to the OIG.

O. DEBTS

1. Payment of Debts Owed the Federal Government

The following requirements supplement 2 CFR § 200.346, “Collection of amounts due.”

The recipient must promptly pay any debts determined to be owed to the federal government. Delinquent debt includes any funds paid to the recipient in excess of the amount to which the recipient is finally determined to be entitled under the terms of the federal award, (including pursuant to a post-delinquency payment agreement) and constitutes a debt to the federal government unless other satisfactory payment arrangements have been made. In accordance with 2 CFR § 200.346, failure to pay a debt within 90 calendar days after demand shall result in the assessment of interest, penalties, and administrative costs in accordance with the provisions of 31 U.S.C. § 3717 and 31 CFR parts 900 through 999. The Council will transfer any debt that is more than 180 days delinquent to the Treasury Bureau of the Fiscal Service for debt collection services, a process known as “cross-servicing,” pursuant to 31 U.S.C. § 3711(g), 31 CFR § 285.12, and any Council regulations and policies promulgated pursuant to its authority, and may result in the Council taking further action as specified in 2 CFR §§ 200.339-343, “Remedies for noncompliance.” Funds for payment of a debt shall not come from other federally sponsored programs and the recipient shall verify the non-federal source(s) of such funds.

2. Late Payment Charges

- a. Interest shall be assessed on delinquent debt in accordance with the Debt Collection Act of 1982, as amended (31 U.S.C. § 3701 *et seq.* The minimum annual interest rate to be assessed is Treasury’s Current Value of Funds Rate (CVFR).⁴ The CVFR is published by Treasury in the *Federal Register*⁵ and in the *Treasury Financial Manual Bulletin*.⁶ The assessed rate shall remain fixed for the duration of the indebtedness.
- b. Penalties shall accrue at a rate of not more than six percent per year or such higher rate as authorized by law.

⁴ Department of the Treasury’s Current Value of Funds Rate (CVFR) webpage - [Link to the Current Value of Funds Rate \(CVFR\) webpage](#), verified 11/10/2021.

⁵ Federal Register website - [Link to the GPO website](#) and [Link to the Federal Register website](#), verified 11/10/2021.

⁶ Treasury Financial Manual Bulletin website - [Link to the Financial Manual Bulletin website](#), verified 11/10/2021.

- c. Administrative charges, that is, the costs of processing and handling a delinquent debt, are determined by the Council.

3. Effect of Judgment Lien on Eligibility for Federal Grants, Loans, or Programs

Pursuant to 28 U.S.C. § 3201(e), unless waived in writing by the Council, a debtor that has a judgment lien against the debtor's property for a debt to the United States shall not be eligible to receive any grant or loan that is made, insured, guaranteed, or financed directly or indirectly by the United States, or to receive funds from the federal government in any program, except funds to which the debtor is entitled as beneficiary, until the judgment is paid in full or otherwise satisfied.