“VIEWING INSTRUCTIONS”

Click on “View” on the top menu bar, then make sure that both the “Document Map” and “Online Layout” have a check mark in front of them (which means that these choices are selected).

The screen will be divided into two sections – the table of contents on the left and the document on the right. Use the scroll bar on the left hand side to find the section you wish to view, then click on the text. The right hand side will show that selected section.

TERMS AND CONDITIONS
for
ADMINISTRATION OF GRANTS

Effective: February 1, 2016

Prepared by
Grants & Auditing

Chris Christie
Governor

Mary E. O'Dowd, M.P.H.
Commissioner

INTRODUCTION

The application, award, and administration of a Grant is subject to applicable laws, regulations, and policies. This document, "Terms and Conditions for Administration of Grants," presents a compilation of the salient features of such policies and becomes a legal part of the award of a Grant. When funds are obtained from the grant payment system, the grantee acknowledges acceptance of the grant terms and conditions which are expressed in this document.

The Department of Health administers a diverse array of grant programs which address the missions of its several Divisions. The Divisions within The Department of Health are responsible for the award, administration, and monitoring of these programs under a variety of legislative authorities, governing regulations, policies, and procedures. Awards are made to a wide range of recipients, including local governments, educational institutions, hospitals, and nonprofit organizations.

The administration of the grant not only requires adherence to the program objectives for which the award was made, but also requires that objectives be accomplished in a businesslike manner. This is particularly important when the costs to recipients and the State Government are rising and The Department of Health funds are limited. For these reasons, recipients of Department of Health funds must establish sound and effective business management systems to assure proper stewardship of funds and activities. Recipients are expected to exercise the same degree of prudence in the expenditure of Department of Health funds as they use in expending their own funds.

The Department of Health views its relationship with recipients as a partnership, with the recipient providing the effort and expertise necessary to carry out approved activities and The Department of Health providing financial assistance. In furtherance of its role in this relationship, The Department of Health has established Grants Management Officers in each of its awarding Divisions. The Grants Management Officers (GMO) serves as the focal point for the business management aspects of grants administration, including receipt of required reports. The GMO is also the official authorized to make the decision on requests for any changes to the terms of an award. Questions concerning the interpretation of policies or the applicability of certain policies to particular programs should be directed to the designated Department of Health GMO.

Supersede Date

April 1, 2015.

Subgrantees and Contractors Under Grants

The information contained in this publication applies principally to the primary grantee receiving the award from The Department of Health. Where Subgrants are authorized by the awarding Division the information and standards contained in this publication also applies to subgrantees. The Department of Health expects grantees to use an objective system for making subawards that is at least as rigorous as the recipient's procurements system in order to help ensure proper accountability of funds, compliance with Federal Cost Principles, and satisfactory performance under the subaward. The information would also apply to cost-type contractors under grants. A grantee must assure that a contract contains the clauses necessary to ensure that all requirements under the grant will be satisfied. Subgrantee awards require prior written approval.

ORDER OF PRECEDENCE

In the event there are conflicting or otherwise inconsistent policies applicable to the administration of grant funds, the following order of precedence shall prevail:

1. Federal or State legislation and statutes.
2. Federal or State regulations.
3. Terms and Conditions for the Administration of Grants.

This publication is intended to provide a common understanding of the framework for the administration of grants. Any question relating to the subject matter in this document or the Department of Health grant agreement and policies in general should be directed to the Department of Health, Grants & Auditing, P.O. Box 360, Trenton, New Jersey 08625-0360, FAX number (609) 633-1705.

ADMINISTRATION AND FEDERAL COST PRINCIPLES:

Grantees are required to follow 2 CFR Chapter 1, Chapter II, Part 200, et al. "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards". This document, commonly referred to as the Super Circular, supersedes and consolidates OMB Circulars A-21, A-50, A-87, A-89, A-102, A-122, and A-133. Federal Cost Principles, NJ Treasury Circulars, and Department of Health policies are the foundation for the General Terms and Conditions of Grants.

You can view more information by visiting NJ OMB through the following link:
http://www.state.nj.us/treasury/omb/supercircular/index.shtml#J1

SECTION I

PRE-AWARD REQUIREMENTS

Page No.

GENERAL

Subpart A - General

1.1 Purpose 1
1.2 Definitions 1
1.3 Appeals 4
1.4 Deviations 5
1.5 Special grant or subgrant conditions for "High-Risk" grantees 5
1.6 Compliance with existing laws 6
1.7 Indemnification 6
1.8 Assignability 6
1.9 Availability of funds 6
1.10 Subawards to debarred and suspended parties 7
1.11 Construction Grants 7

Subpart B - Forms for Applying for Grants

2.1 Scope of subpart 8
2.2 Special instructions 8
2.3 Submission of applications 8
2.4 Processing application forms 8
2.5 Application forms 8
2.6 Construction Grants 8

Subpart C - Bonding and Insurance

3.1 General 9
3.2 Construction and facility improvement 9
3.3 Fidelity bonds 9
3.4 Source of bonds 9

Subpart D - Construction Grants

4.1 Definitions 10
4.2 Limitations 10
4.3 Application, Award Document and Terms and Conditions 10
4.4 Special Conditions for Construction Grants 10
4.5 Payments 10
4.6 Allowable and Unallowable Costs 10
4.7 Other Conditions 11

SECTION II

POST-AWARD REQUIREMENTS

Page No.

FINANCIAL ADMINISTRATION

Subpart E - Standards for Grantee and Subgrantee Financial Management Systems

5.1 Scope of subpart 12
5.2 Financial management standards 12
5.3 Construction Grants 12

Subpart F - Cash Management

6.1 Scope of subpart 13
6.2 Financial Management for Subgrantees 13
6.3 Payment Methods 13
6.4 Physical segregation and eligibility 13
6.5 Minority-owned banks 13
6.6 Interest Bearing Account 13
6.7 Exceptions 13
6.8 Effect of program income, refunds, and audit recoveries on payment 13
6.9 Construction Grants 13

Subpart G - Grant and Subgrant Payment Requirements

7.1 Scope of subpart 14
7.2 Basic standard 14
7.3 Payment methods 14
7.4 Withholding of payments 14
7.5 Payments to subgrantees 14
7.6 Construction Grants 14

Subpart H - Allowable Cost

8.1 Limitation on use of funds 15
8.2 Applicable cost principles 15
8.3 Allowable Costs 15
8.4 Administrative Costs 15
8.5 Cost Control Initiatives 15
8.6 Construction Grants 18

Subpart I - Period of Availability of Funds

9.1 General 19
9.2 Liquidation of obligations 19
9.3 Construction Grants 19

Subpart J - Matching or Cost Sharing

10.1 Scope of subpart 20
10.2 Basic rule 20
10.3 Qualifications and exceptions 20
10.4 Valuation of donated services 20
10.5 Valuation of third-party donated supplies and loaned equipment or space 21

Page No.

10.6 Valuation of donated equipment, buildings, and land 21
10.7 Valuation of grantee or subgrantee donated real property for construction/acquisition 21
10.8 Appraisal of real property 21
10.9 Construction Grants 21

Subpart K - Program Income

11.1 General 22
11.2 Cost of generating program income 22
11.3 Government revenues 22
11.4 Royalties 22
11.5 Property 22
11.6 Use of program income 22
11.7 Interest earned on advances of grant funds 22
11.8 Construction Grants 22

Subpart L - Audits

12.1 Basic rule 23
12.2 Definition 23
12.3 Single audit policy 23
12.4 Responsibility of cognizant agency 24
12.5 Single audit policy limitations 24
12.6 Access to grantee records and public accountants workpapers 24
12.7 Completion of the audit 24
12.8 Auditor selection 24
12.9 Audit costs 24
12.10 Submission of audit report 24
12.11 Penalties 25
12.12 Construction Grants 25
12.13 Consortium or lead agency audit requirement 25

CHANGES, PROPERTY AND SUBGRANTS

Subpart M - Program Changes and Budget Revisions

13.1 Scope and applicability of this subpart 26
13.2 Relationship to cost principles 26
13.3 Budget changes 27
13.4 Programmatic changes 27
13.5 Requesting prior approval 28
13.6 Timing 29
13.7 Grant changes 29
13.8 Other changes 29
13.9 Costs allowable with approval 30
13.10 Construction Grants 30

Subpart N - Real Property, Equipment, Supplies and Copyrights

14.1 Scope and applicability of this subpart 31
14.2 Prohibition against additional requirements 31
14.3 Title 31
14.4 Real property 31
14.5 Equipment 31
14.6 Supplies 32
14.7 Copyrights 32
14.8 Construction Grants 32

Page No.

Subpart O - Procurement

15.1 Procurements subject to this subpart 33
15.2 Procurement standards 33
15.3 Purchase of Real Property 37
15.4 Construction Grants 38

Subpart P - Subgrants

16.1 Subgrants 39
16.2 Construction Grants 39

REPORTS, RECORDS, RETENTIONS AND ENFORCEMENT

Subpart Q - Monitoring and Reporting Program Performance

17.1 Monitoring by grantees 40
17.2 Performance reports 40
17.3 Significant developments between scheduled reporting dates 40
17.4 Site visits 40
17.5 Submission of reports 40
17.6 Construction Grants 40

Subpart R - Financial Reporting

18.1 Scope and applicability of subpart 41
18.2 General 41
18.3 Report of grant expenditures 41
18.4 Construction Grants 41

Subpart S - Retention and Access Requirements for Records

19.1 Applicability 42
19.2 Length of retention period 42
19.3 Starting date of retention period 42
19.4 Substitution of original records 42
19.5 Access to records 42
19.6 Restrictions on public access 42
19.7 Construction Grants 42

Subpart T - Enforcement

20.1 Enforcement 43
20.2 Termination for convenience 43
20.3 Construction Grants 43

SECTION III

AFTER THE GRANT REQUIREMENTS

Page No.

CLOSEOUT

Subpart U - Grant and Subgrant Closeout

21.1 Closeout 45
21.2 Later disallowances and adjustments 45
21.3 Amounts payable to the Department 45
21.4 Remedies for non-compliance 45
21.5 Collection of amounts due 45
21.6 Applicability to subgrants 46
21.7 Construction Grants 46

SUBPART A - GENERAL

1.1 Purpose

This document establishes uniform requirements for the administration of grants awarded by The Department of Health.

1.2 Definitions

"Accrued expenditures" mean the charges incurred by the grantee during a given period requiring the provision of funds for: (1) goods and other tangible property received; (2) services performed by employees, contractors, subgrantees, subcontractors, and other payees; and (3) other amounts becoming owed under programs for which no current services or performance is required, such as annuities, insurance claims, and other benefit payments.

"Accrued income" means the sum of: (1) earnings during a given period from services performed by the grantee and goods and other tangible property delivered to purchasers, and (2) amounts becoming owed to the grantee for which no current services or performance is required by the grantee.

"Acquisition" of property includes purchase, construction, or fabrication of property, but does not include rental of property or alterations and renovations of real property.

"Acquisition cost" of an item of purchased equipment means the net invoice unit price of the property including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Other charges such as the cost of installation, transportation, taxes, duty or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the grantee's regular accounting practices.

"Administrative costs includes but is not limited to:

(a) Salaries, fringe benefits, training and other support costs such as supplies, equipment, telephone, etc. of the activities of an executive director, administrative assistants and other members of their staff that relate to their performance of general and administrative functions.

(b) All costs associated with conducting support of boards of directors (Trustees) and their activities.

(c) The cost of establishing and maintaining accounting, auditing, personnel recruitment and human resource management, procurement services, bonding costs, legal services, public information, public relations, payroll and all management information systems that are required for the proper management of the grant program. Also, includes any advertising costs of personnel recruitment, solicitation of bids for procurement of goods and services, and the cost of the annual single audit.

(d) Certain costs benefits both direct program and administrative activities and need to be prorated based on an acceptable allocation method. Some examples of costs which might need to be prorated:

- Cost of leased vehicles;
- Building, space, and related costs such as taxes, heat, light, power, alterations, maintenance, repairs, taxes, depreciation, use allowance;
- Insurance and indemnification costs;
- Office supplies, printing and reproduction costs;

(e) All travel costs except for transportation of clients.

(f) If an agency has an approved indirect cost rate, the application of the rate to the applicable base will result in costs that are classified as administrative cost.

"Administrative requirements" mean those matters common to grants in general, such as financial management, kinds and frequency of reports, and retention of records. These are distinguished from "programmatic requirements," which concern matters that can be treated only on a program-by-program or grant-by-grant basis, such as kinds of activities that can be supported by grants under a particular program.

"Advance, or advanced payment" See the Scheduled Advanced Payment definition.

"Amount received for trade-in" of an item of equipment traded in for replacement equipment means the amount that would have been paid for the replacement equipment without a trade-in minus the amount paid with the trade-in. The term refers to the actual difference, not necessarily the trade-in value shown on an invoice.

"Applicant" means any authorized agency that makes application for a grant.

"Approved budget" means a budget (including any revised budget) which has been approved by the granting agency. The approved budget is contained in Attachment B to the Grant. It should be related to performance for program evaluation purposes wherever appropriate and required by the Department.

"Budget" means the approved financial plan to carry out the purpose of the grant. This plan is the financial expression of the project or program as approved during the grant application, negotiation and award process.

"Budget period" means the interval of time (usually 12 months) for which a project is divided for funding and reporting purposes.

"Cash contributions" means the grantee's cash outlay, including the outlay of money contributed to the grantee or subgrantee by other agencies and institutions, and private organizations and individuals.

"Cash expenditures", as used in the "cash basis" reporting system means the sum of actual cash disbursements for goods and services and the amount of

cash advances and payments made to subgrantees and contractors.

"Cognizant audit agency" means a State agency that is assigned the responsibility to review or audit a grantee receiving funds from the State of New Jersey.

"Consortium/Lead Agency" is the entity that is responsible for coordination of grant supported activities and provides funds to subgrantees. The Consortium/Lead Agency is to advise subgrantees of all grant compliance requirements imposed on them as stated in the Terms and Conditions for Administration of Grants. The Consortium/Lead Agency is to ensure that audits are completed and reports are received in a timely basis and in accordance to the Terms and Conditions for the Administration of Grants. Copies of annual audit reports are to be submitted to the Department's Office of Financial Services after completion. The Consortium/Lead Agency is to monitor the activities of subgrantees as necessary to assure that the grant funds are used for authorized purposes in compliance with the Terms and Conditions for Administration of Grants.

"Construction grant" means an award of funds for the purpose of constructing a facility, providing alterations and renovations to an existing structure, or purchase of an existing building.

"Contract" means a procurement entered into through established Department of Treasury policy and State Law. A contract is used for the purchase of a service or a product which serves the granting agency's interest. Contracts are generally performance based to the extent that payment is tied to the achievement of some definable and prenegotiated outcome. A contract is usually negotiated on the basis of a unit cost. In a contract the granting agency has right to terminate for cause or convenience. A contract may only be entered into through established State procurement laws and regulations and is not subject to this policy statement.

"Cost reimbursement payment" is the payment system which grantees will use when not on an advance payment method and are paid for actual costs incurs.

"Cost sharing or matching" means the value of the third-party in-kind contributions and the portion of the costs of a project or program not borne by the Department.

"Cost-type contract" means a contract or subcontract under a grant in which the contractor or subcontractor is paid on the basis of the costs it incurs.

"Debarment" means the prohibition to award grants by the Department and the State of New Jersey to those agencies that are not in compliance with state or federal procurement and non-procurement programs rules and regulations.

"Department" means the New Jersey State Department of Health.

"Equipment" means tangible, non-expendable personal property including exempt property charged directly to the grant having a useful life or more than one year and an acquisition cost of $5000 or more per unit. A grantee may use its own definition of equipment provided that such definition would at least include all equipment defined above.

"Expenditures" mean charges made to the project or program. They may be reported on a cash or accrual basis. For reports prepared on a cash basis, expenditures are the sum of actual cash disbursement for direct charges for goods and services, the amount of indirect expense incurred, the value of in-kind contributions applied (if applicable), and the amount of cash advances and payments made to contractors and subgrantees. For reports prepared on an accrued expenditure basis, expenditures are the sum of actual cash disbursements, the amount of indirect expense incurred, the value of in-kind contributions applied (if applicable), and the new increase (or decrease) in the amounts owed by the grantee for goods and other property received, for services performed by employees, contractors subgrantees, sub-contractors, and other payees, and other amounts becoming owed under programs for which no current services or performance are required, such as annuities, insurance claims, and other benefit payments.

"Expenditure report" means the form designated by the Department for the reporting of grant expenditures.

"Federal Cost Principles" means the information included in 2 CFR Chapter 1, Chapter II, Part 200, et al. "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards", You can view more information by visiting NJ OMB through the following link: http://www.state.nj.us/treasury/omb/supercircular/index.shtml#J1

"Funds from Other Sources" means non grant funds used to support the grant initiatives. Others funds are limited to Cost Sharing, Matching, or other types of transactions as required by law, regulation, or the funding source.

"Grant" means an award of financial assistance in the form of money, or property in lieu of money, by the State of New Jersey to an eligible recipient.

"Grants closeout" means the process by which a granting agency determines that all applicable administrative actions and all required work of the grant have been completed by the grantee and the granting agency.

"Grantee" means an organization, government, nonprofit corporation, or other legal entity to which a grant is awarded and which is accountable to the State of New Jersey for the use of funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the award document.

"Grantee's Fiscal Year" means the grantee's financial reporting cycle.

"Granting agency" means the organization within the New Jersey Department of Health which is legally authorized to award and administer grants.

"Grants Management Officer" (GMO) means the employee designated by the granting agency to be

responsible for the business management responsibilities of the grant.

"Interest Bearing Account" is the type of account for depositing payments a grantee receives under the advanced payment method.

"Indirect Cost" means a cost incurred for common or joint objectives that cannot be readily identified with a particular, final cost objective. After direct costs have been determined and assigned to awards or other work, as appropriate, indirect costs are those remaining to be allocated to benefitting cost objective. *A cost may not be allocated to an award as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been assigned to an award as a direct cost.

"Obligations" When used in connection with the grantee entity's utilization of funds under a State or Federal award, obligations means orders placed for property and services, contracts and subawards made, and similar transactions during a given period that require payment by the grantee during the same or a future period.

"Personal property" means property of any kind except real property. It may be tangible--having physical existence, or intangible--having no physical existence, such as patents, inventions, and copyrights.

"Prior approval" means documentation evidencing consent prior to incurring specific costs.

"Program income" means gross income earned by the grantee or subgrantee that is directly generated by a grant supported activity, or earned as a result of the grant during the award period. Program income does not include interest earned from interest bearing accounts required for advanced payment.

"Program Management Officer" means the employee designated by the granting agency to be responsible for the technical, scientific and programmatic aspects and monitoring of the grant award.

"Progress payment" is a payment made to a grantee based upon the performance of a negotiated level of service.

"Project period" means the period of time expected to complete a project.

"Real property" means land, including land improvements, structures and appurtenances thereto, excluding movable machinery and equipment.

"Recipient means grantee."

"Replacement equipment" means property acquired to take the place of other equipment. To qualify as replacement equipment replaced and must be of the same nature or character, although not necessarily the same model, grade, or quality.

"System for Administering Grant Electronically (SAGE)" means the web-based application used by the Department for processing grant applications, issuing awards, and maintaining electronic signatures.

"Scheduled advance payment" is a payment based upon a schedule developed at the time the grant is negotiated. This schedule is intended to provide cash in advance of anticipated expenditures.

"Share", when referring to the granting agency's portion of real property, equipment or supplies, means the same percentage as the granting agency's portion of the acquiring party's total costs under the grant to which the acquisition costs under the grant to which the acquisition cost of the property was charged. Only costs are to be counted-not value of third-party in-kind contributions.

"Simplified acquisition threshold" means the dollar amount below which a grantee may purchase property or services using the small purchase method as referenced in the Federal Super Circular.

"Status History" means the section in SAGE that records electronic signatures and their approval role.

"Subgrant" means an award of financial assistance in the form of money, or property in lieu of money, made under a grant by a grantee to an eligible subgrantee. The award of a grant by the grantee to a subgrantee is allowed only with the prior approval of the Granting Agency.

"Subgrantee" means the government, nonprofit corporation, or other legal entity to which a subgrant is awarded and which is accountable to the grantee for the use of the funds provided. The subgrantee is the entire legal entity even if only a particular component of the entity is designated in the subgrant award document.

"Subrecipient means a subgrantee."

"Supplies" means all tangible personal property other than "equipment" as defined in this part.

"Suspension" means either (1) temporary withdrawal of the authority to obligate grant funds pending corrective action by the grantee or subgrantee or a decision to terminate the grant, or (2) an action taken by a suspending official in accordance with agency regulations implementing E.O. 12549 to immediately exclude a person from participating in grant transactions for a period, pending completion of an investigation and such legal or debarment proceedings as may ensue."

"Termination" means permanent withdrawal of the authority to obligate previously-awarded grant funds before that authority would otherwise expire. It also means the voluntary relinquishment of that authority by the grantee or subgrantee.

"Termination" does not include: (1) Withdrawal of funds awarded on the basis of the grantee's underestimate of the unobligated balance in prior period; (2) Withdrawal of the unobligated balance as

of the expiration of a grant; (3) Refusal to extend a grant or award additional funds, to make a competing or noncompeting continuation, renewal, extension, or supplemental award; or (4) Voiding of a grant upon determination that the award was obtained fraudulently, or was otherwise illegal or invalid from inception.

"Terms of the grant or subgrant" means all requirements of the grant or subgrant, whether in statutes, regulations, the award document or this document.

"Third-party in-kind contributions" means property or services which benefit a grant-supported project or program and which are contributed by third parties without charge to the grantee or the sub-grantee, under the grant or subgrant.

"Unobligated balance" means the portion of the funds authorized by the granting agency that has not been obligated or expended by the grantee.

1.3 Appeals

(a) Purpose

In accordance with department policy, the applicant or grantee has the right to appeal to the Department Grants Appeal Board any action it feels is inconsistent with the terms of the grant award or application process. The Department's appeal process is explained in this section.

(b) Scope

This procedure shall apply to all grant disputes arising from the application, negotiations, award, operations and other post award activities taken by the Department or its granting agencies.

An appeal may be initiated by an applicant or grantee, sub-grantee or any person or organization that can demonstrate a direct interest, involvement or has been impacted by the actions of the Department or its granting agencies prior to the award of a grant through and until such grant has been closed.

Sub-grantee should initiate appeals to their granting agency before appealing to The Department of Health.

The Board will only reopen an audit to review additional cost documentation if that documentation provides substantive new knowledge directly relevant to an issue on appeal and if good cause exists for not providing information during the audit not previously provided to the auditor. This policy is based upon the fact that the audit report was completed after an exit interview with the agency at time the agency had the opportunity to review the draft audit report and provide any additional supporting documentation that was pertinent to the matter.

(c) Determination subject to the jurisdiction of the Board

(1) Subject to (b) and paragraph (c)(2) of this sections, the Board shall have jurisdiction over the following determinations:

(a) A determination that an application for a grant will not be funded.

(b) A determination that audit findings have fairly represented the financial conditions of a grantee during the period of the grant.

(c) Termination, in whole or in part, of a grant for failure of the grantee to carry out its approved project proposal in accordance with the applicable law and the terms of such grant for failure of the grantee otherwise to comply with any law, regulation, assurance, term, or condition applicable to the grant.

(d) A determination that an expenditure not allowable under the grant has been charged to the grant or that the grantee has otherwise failed to discharge its obligation to account for grant funds.

(e) The disapproval of a grant written request for permission to incur an expenditure during the term of a grant.

(f) A determination that a grant is void.

(g) A determination to permit the debarment of a grantee that has violated requirements of their grant from eligibility to receive further financial assistance from the Department.

(2) A determination described in this section may not be reviewed by the Board unless: (1) An officer or employee of the Department has notified in writing either the applicant who has been turned down or the agency who has been awarded the grant of such a determination and (2) such informal procedures as the agency has established for the resolution (prior to submission to the Board) of issues related to such determination have been exhausted. A notification described in subparagraph (1) of this paragraph shall set forth the reasons for the determination in sufficient detail to enable the grantee to respond and shall inform the grantee of his opportunity for review under this part.

(d) Submission

Application for review

(1) A grantee with respect to whom a determination described in (e) has been made and who desires review may file with the Board an application for review of such determination. The grantee's application for review must be postmarked no later than 30 days after the postmark date of notification provided pursuant to Section (c)(2)(1), except when the Department grants an extension of time for good cause shown.

(2) Although the application for review need not follow any prescribed form, it shall clearly identify the question or questions in dispute and contain a full statement of the grantee's position with respect to such question or questions, and the pertinent facts and reasons in support of such position.

(3) An agency that has submitted an application for a health services grant, which application has been turned down, may file with the Board an application for review of this decision.

If the Board determines after receipt of an application for review, that the requirements of section (c) and paragraph (d)(1) of this section have been satisfied, it shall promptly process the appeal. If the Board determined that such requirements have not been met, the Board shall advise the grantees of reasons for the rejection of the application.

(e) Effect of submission

When an application has been filed with the Board with respect to a determination, no action may be taken by the constituent agency pursuant to such determination until such application has been disposed of, except that the filing of the application shall not offer the authority which the constituent agency may have to suspend assistance under a grant during proceeding under this part or otherwise to withheld or defer payments under the grant.

(f) Substantive and procedural rules

(1) Substantive rules. The Board bound by all applicable laws and regulations.

(2) Procedural rules.

(a) With respect to cases involving, in the opinion of the Board, no dispute as to a material fact the resolution of which would be materially assisted by oral testimony the Board shall take appropriate steps to afford to each party to the proceeding an opportunity for presenting their case at the option of the Board in whole or in part in writing or in an informal conference before the Board which shall afford each party:

(1) sufficient notice of the issues to be considered (where such notice has not previously been afforded); and

(2) an opportunity to be represented by counsel.

(b) With respect to cases involving a dispute as to a material fact the resolution of which would be materially assisted by oral testimony, the Board shall afford each party an opportunity for a hearing, which shall include, in addition to provisions required by subparagraph (a) (ii) of this paragraph provisions designed to assure to each party the following:

(1) An opportunity for a record of the proceedings:

(2) An opportunity to present witnesses on his behalf; and

(3) An opportunity to cross-examine other witnesses either orally or through written interrogatories.

(4) After consultation with the constituent agencies, the Board shall, with the approval of the Commissioner promulgate and publish rules of procedure, including rules respecting opportunity for intervention by interested third-parties, relating to proceedings under this report.

(g) Final Decision

(1) The Board shall prepare a written decision, which shall include findings of fact and conclusions based thereon.

(2) Copies of the decisions shall be mailed promptly by the Board to each party, and to the Commissioner within a specified time.

(h) Separation of functions

No person who participated in prior administrative consideration, or in the preparation or presentation of, a case submitted to the Board shall advise or consult with, and no person having an interest in such case shall make or cause to be made a interest communication to, Board, with respect to such case, unless all parties to the case are given timely and adequate notice of such advice, consultation, or communication, and reasonable opportunity to respond is given all parties.

1.4 Deviations

(a) Except as provided in 1.5, a deviation is any exception to this part not required by State or Federal statute without allowance of agency discretion. A deviation may be either:

(1) Use of any policy, procedure, form, standard, or grant or subgrant term which is inconsistent with an applicable provision of this part, or

(2) Failure to use any applicable policy, procedure, form, standard, or grant or subgrant term which is required by this part.

(b) In order to maintain uniformity to the greatest extent feasible, deviations shall be kept to a minimum. A deviation, whether proposed by an applicant, a recipient of an award, or an official of the granting agency, may be authorized only when it is necessary to meet programmatic objectives or to conserve grant funds, or when it is otherwise essential in the public interest.

1.5 Special grant or subgrant conditions for "high-risk" grantees

(a) Without regard to the procedures referred in 1.4, special conditions more restrictive than those prescribed may be imposed as needed when the granting agency has determined that the grantee:

(1) Is not financially stable.

(2) Has a history of unsatisfactory performance, or

(3) Has a management system which does not meet the management standards set forth in this publication.

(4) Has not conformed to the terms and conditions of previous grant awards.

(5) Is otherwise not responsible. If the granting agency still determines that an award will be made, special conditions and/or restrictions shall correspond to the high-risk condition and shall be included in the award.

(6) Is in bankruptcy proceedings.

(b) Special conditions or restrictions may include:

(1) Payments will be made on a reimbursement basis;

(2) Withholding authority to proceed to the next phase until receipt of evidence of acceptable performance within a given budget period;

(3) Requiring additional, more detailed financial reports;

(4) Additional project monitoring may be required;

(5) Requiring the grantee or subgrantee to obtain technical or management assistance; or

(6) Establishing additional prior approvals.

(c) When special conditions or restrictions are imposed the grantee or subgrantee will be notified as early as possible in writing, of;

(1) The nature of the special conditions;

(2) The reason(s) for imposing them;

(3) The corrective actions which must be taken before they will be removed and the time allowed for completing the corrective actions; and

(4) The method of requesting reconsideration of the conditions/ restrictions imposed.

1.6 Compliance with existing laws

The recipient Agency in order to induce the Department to award a grant agrees in the performance of this grant to comply with all federal, state, and municipal laws, rules, and regulations generally applicable to the activities by whomsoever performed in which the Agency is engaged in the performance of this grant. Failure to comply with such laws, rules, or regulations shall be grounds for termination of this agreement.

1.7 Indemnification

In providing any aid, benefit, or service on behalf of the Department pursuant to this grant, the Grantee/Agency agrees that the performance shall be in strict compliance with any applicable State or Federal laws. In event that the Grantee/Agency, its agents, servants, employees or subcontractors violate or are alleged to have violated any relevant laws during the performance of this grant, the Grantee/Agency shall defend the State in any action or administrative proceeding commenced pursuant to such laws. The Grantee/Agency shall indemnify, protect, and save harmless the Department, its agents, servants, and employees from and against any and all suits, claims, losses, demands, or damages of whatever kind or nature arising out of or claimed to arise out of the alleged violation. The Grantee/Agency shall, at its own expense, appear, defend, and pay any and all charges for legal services and any and all costs and other expenses arising from such action or administrative proceeding or incurred in connection therewith. In the event that an individual files a complaint with the Department, which is investigated by the Department, the Grantee/Agency agrees to abide by any decision rendered by the Department. If any action or administrative proceeding results in an award of damages against the Department or if the Department incurs any expense to cure a violation, the Grantee/Agency shall satisfy and discharge the same at its own expense.

The Department shall, as soon as practicable after a claim has been made against it, give written notice thereof to the Grantee/Agency along with full and complete particulars of the claim. If any action or administrative proceeding is brought against the Department or any of its agents, servants, and employees, the Department shall expeditiously forward or have forwarded to the Grantee/Agency every demand, complaint, notice, summons, pleading, or other process received by the Department or its representatives.

It is expressly agreed and understood that any approval by the Department of the services provided by the Grantee/Agency pursuant to this grant will not relieve the Grantee/Agency of the obligations to comply with State and Federal laws and to defend, indemnify, protect, and save harmless the Department.

It is further agreed and understood that the Department assumes no obligation to indemnify or save harmless the Grantee/Agency, its agents, servants, employees and subgrantees for any claim which may arise out of their performance of this Agreement. Furthermore, the Grantee/Agency expressly understands and agrees that the provisions of this indemnification clause shall in no way limit the Grantee's/Agency's obligations assumed in this Agreement, nor shall they be construed to relieve that Grantee/Agency from any liability, nor preclude the Department from taking any other actions available to it under any other provisions of this Agreement or otherwise at law.

The Agency (grantee) agrees to be solely responsible for and to indemnify and keep harmless the Department against all loss or liability arising out of the work undertaken by the Grantee, its employees, agents or subcontractors, regardless of the Grantee's negligence, and whether or not the Department or it's employees or agents have been negligent or have breached any statutory duty, and Grantee will defend against the Grantee and/or against the Department arising out of the work undertaken by the Grantee and will make good to, and reimburse the Department for any expenditures that the Department may make to defend such suits.

State government agencies are exempted from this provision.

1.8 Assignability

The Grantee shall not subgrant any of the work services covered by this grant, nor shall any interest be assigned or transferred except as may be provided for in the grant or with the express written approval of the granting agency.

1.9 Availability of funds

The grantee recognizes and agrees that continuation of funding under a grant is expressly dependent upon the availability of funds to the Department appropriated by

the State Legislature from State or Federal revenue or such other funding sources as may be applicable. The Department shall not be held liable for any breach of this agreement because of the absence of available funding appropriations.

1.10 Subawards to debarred and suspended parties

Grantees and subgrantees must not make any award or permit any award (subgrant or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspensions, 12689, and 2CFS part 180 ."

1.11 Construction Grants

This subpart applies to Construction Grants except for those sections that are beyond its scope and intent. (See Subpart D)

SUBPART B - FORMS FOR APPLYING FOR GRANTS

2.1 Scope of subpart

This subpart prescribes forms and special instructions to be used in applying to the Department for grants. Grant applications are to be submitted electronically to the Department. Only in extraordinary circumstances will the Department accept applications in a format other than the electronic version.

2.2 Special instructions

This subpart applies only to applications for grants, and is not required to be applied by grantees in dealing with applicants for subgrants. However, grantees are encouraged not to adopt more detailed or stringent application requirements for subgrants.

(a) Grantees will be required to submit the grant application electronically to the Department.

(b) When a grantee applies for additional funding, an extension of award period or amends a previously submitted application, an Amendment with appropriate justification will be required.

2.3 Submission of applications

The application shall be submitted electronically to the appropriate granting agency as stipulated in the Request for Applications. The time allowed for submission shall be determined by the granting agency, allowing adequate time for the applicant to prepare the proposal, the negotiation of the award to be made, and the issuance of a Grant so the grantee can commence work within a reasonable amount of time after the effective date. The submission of an application shall be confirmed by the granting agency with an e-mail acknowledgement notice within ten days of receipt.

An application for grant funds will be prepared by the prospective applicant and processed by the granting agency when there is reasonable certainty that appropriations are or will become available to support the activity. When full funding is not available, the award is issued at the available amount and Amended incrementally as funds become available.

2.4 Processing application forms

The internal department process for determining the award of funds will be governed by the policies of the granting agency, and such other Department requirements as required.

2.5 Application forms

(a) The standard grant application forms shall be used for all awards and submitted electronically to the Department.

(b) The granting agency is required to provide the applicant with the following:

(1) Terms and Conditions for Administration of Grants;

(2) Compliance Requirements. The granting agency shall provide the applicant with the general and specific compliance requirements applicable to the funding source.

(c) Each granting agency will determine the necessity for requiring optional pages.

(d) For a specific group of grantee applications that will be considered for negotiation, the forms required from the grantees shall be basically the same to insure continuity and a fair assessment of each applicant's submission.

(e) When a Request for Application is issued as the basis for awards, the application must be exactly the same for all agencies.

(f) Instructions on completing the forms shall be provided by the granting agency. Any additional information required shall be provided by the Program or Grant Management Officer.

2.6 Construction Grants

This subpart applies to Construction Grants except for those sections that are beyond its scope and intent. (See Subpart D)

SUBPART C - BONDING AND INSURANCE

3.1 General

In administering grants and subgrants, recipients shall observe their regular requirements and practices with respect to bonding and insurance. No additional bonding and insurance requirements, including fidelity bonds, shall be imposed by the terms of the grant or subgrant except as provided in Sections 3.2 through 3.4.

3.2 Construction and facility improvement

(a) Scope of this section.

This section covers requirements for bid guarantees, performance bonds, and payments bonds when the recipient will contract for construction or facility improvements (including alterations and renovations of real property) under a grant or subgrant.

(b) Definitions.

(1) "Bid guarantee" means a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, if its bid is accepted, execute the required contractual documents within the time specified.

(2) "Performance bond" means a bond executed in connection with a contract to secure fulfillment of all the contractor's obligations under the contract.

(3) "Payment bond" means a bond executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

(c) Bids and contracts of $150,000 or less.

The recipient shall follow its own requirements and practices relating to bid guarantees, performance bonds, and payment bonds.

(d) Bids and contracts exceeding $150,000.

The recipient may follow its own regular policy and requirements if the granting agency has determined that its interest will be adequately protected. If this determination has not been made the minimum requirements shall be as follows:

(1) A bid guarantee from each bidder equivalent to 5 percent of the bid price;

(2) A performance bond on the part of the contractor for 100 percent of the contract price; and

(3) A payment bond on the part of the contractor for 100 percent of the contract price.

3.3 Fidelity bonds

(a) If the grantee is not a government, the granting agency may require it to carry adequate fidelity bond coverage where the absence of coverage for the grant-supported activity is considered as creating an unacceptable risk.

(b) If the subgrantee is not a government, the granting agency or the grantee may require that it carry adequate fidelity bond coverage where the absence of coverage for the subgrant-supported activity is considered as creating an unacceptable risk.

(c) A fidelity bond is a bond indemnifying the recipient against losses resulting from the fraud or lack of integrity, honesty or fidelity of one or more employees, officers or other persons holding a position of trust.

3.4 Source of bonds

Any bonds required under 3.2(d) (1) through (3) or 3.3 shall be obtained from companies holding certificates of authority as acceptable sureties.

SUBPART D - CONSTRUCTION GRANTS

4.1 Definitions

(a) "Construction grant" means an award of funds for the purpose of constructing a facility, providing alterations and renovations to an existing structure, or purchase of an existing building.

(b) Alterations and Renovations

Alterations and renovations are generally defined as work required to change the interior arrangements or install equipment of an existing facility so it may be more effectively utilized for its current designated purpose or adopted to an alternative use to meet a programmatic requirement. Alterations and renovations may include work referred to by such terms as improvement, conversion, reconversion, rearrangement, rehabilitation, remodeling, or modernization.

4.2 Limitations

(a) A construction grant may be awarded for periods up to three (3) years with appropriate extensions of time as would be reasonably necessary to accomplish the intent of the award.

(b) State and federal regulations, including compliance requirements governing the allowability of the use of funds, will determine whether funds may be used for construction grants.

4.3 Application, Award Document and Terms and Conditions

(a) The standard Grant application forms shall be used for construction grants supplemented by such additional information as will be needed to evaluate the proposal and establish the approval for the costs. This includes the FS-26 Cost Estimate Outline form.

(b) The standard Grant document shall be used to make the award.

(c) The Terms and Conditions for Grants will apply to construction grants except for those sections that are determined as beyond the scope and intent of the award.

4.4 Special Conditions for Construction Grants

(a) A grant for construction shall be separate from a grant for services.

(b) A Grant for services may contain funds for alterations and renovations if the cost will be incurred and disbursed in accordance with the terms of the grant and within the budget period. Funds not obligated within the budget period may not be charged to a construction grant if the intent is to extend the time available to spend the funds.

(c) The granting agency shall review and approve the working drawings and specifications before a bid may be advertised or negotiation of a contract can take place.

(d) The building has a useful life consistent with program purposes and is architecturally and structurally suitable for conversion to the type of space required to meet program needs.

(e) It is cost effective to perform such work.

(f) The construction is essential for the grantees program and the space involved will actually be occupied by the program. If space is unused for the program's basic purposes, it may be rented. Program income earned from the rent will be returned to the Department in proportion to the share of the construction costs borne from grant funds and approved program income.

(g) Unused space remaining after six (6) months from completion of the project will be considered excess and any costs for the building will be adjusted so that the granting agency only pays for the share approved for program operations.

(h) The unexpended balances of the construction grant including grant funds, program income and earned interest at the end of the grant period will be returned to the Department.

4.5 Payments

(a) Payments will be made commencing after the grantee has submitted all the required information for grant approval of the project.

(b) The method of payment will be by payment voucher. The scheduled advanced payment system will not apply for construction grants. Payments should be processed to cover initial advances needed to commence work with additional reimbursement on the basis of completion of each phase of the work.

(c) Program income and grantee funds will be considered first dollar.

(d) A Report of Grant Expenditures, supplemented with the FS-26 spending breakdown, and a request for reimbursement for construction grants shall accompany each payment voucher. The report shall be reviewed and funding authorized as appropriate and to minimize excess state cash in the hands of the grantee.

(e) Program income designated for a construction grant will be deposited to an interest bearing account until the funds are needed. Interest earned will be used for the approved purposes of the grant.

4.6 Allowable and Unallowable Costs

(a) A Grant for construction may include costs associated with the following:

(1) Physical characteristics - interior dimensions, surfaces and finishes.

(2) Interior environment - temperature, humidity, ventilation and acoustics.

(3) Utility services - plumbing, electricity, gas, vacuum or other laboratory piping.

(4) Unfinished shell space - to make it suitable for purposes other than human occupancy such as the storage of supplies.

(5) Fixed equipment - casework, large equipment.

(6) Certain costs of installing equipment such as the removal and replacement of wall sections and door frames, cost of connecting utility lines, replacing finishes and furnishings, and installing any accessory devices required.

(7) Costs associated with new construction, including relocation of exterior walls, roofs and floors, attachment of fire safety devices, development and repair of parking lots (when associated with interior or exterior building construction or renovation).

(8) Costs necessary to obtain an initial occupancy permit.

(9) Modular furniture.

(b) Costs that are not allowable under a construction grant are as follows:

(1) Mortgage and operational costs of the structure.

(2) Routine maintenance and repairs to the facility or its contents.

(3) Moveable equipment and furniture excluding modular furniture.

4.7 Other Conditions

(a) A construction grant may be incrementally funded over the period of the award. Additional application information will not be needed if the award is modified only to increase the funding level.

(b) An award may consist of grant funds, program income and grantee support and will be reflected as a total plan.

(c) A construction grant will be subject to the same audit requirements that the agency must comply with for other funding sources including the single audit if applicable.

SUBPART E - STANDARDS FOR GRANTEE AND SUBGRANTEE FINANCIAL MANAGEMENT SYSTEMS

5.1 Scope of subpart

(a) This subpart contains standards for financial management systems.

(b) A grantee or subgrantee must expend and account for grant funds in accordance with applicable federal and state legislation and the Terms and Conditions of the Administration of Grants. Grantee or subgrantee laws or procedures for expending and accounting for its own funds may be followed if they do not conflict with the Terms and Conditions. Fiscal control and accounting procedures of the grantee, as well as its subgrantees must be sufficient to:

(1) Permit preparation of reports required by this part and the statutes authorizing the grant, and

(2) Permit the tracing of funds to a level of expenditures adequate to establish that such funds have not been used in violation of the restrictions and prohibitions of applicable statutes.

(c) The financial management systems of other grantees and subgrantees must also meet the following standards of this subpart.

5.2 Financial management standards

At the highest level of the organization, systems must be established to control and account for funds received from The Department of Health.

(a) Financial reporting. Accurate, current, and complete disclosure of the financial results of the financially assisted activities must be made in accordance with the financial reporting requirements of the grant or subgrant. The terms of grants and subgrants shall not require financial reporting on the accrual basis if the recipient's accounting system is maintained on the cash basis.

(b) Accounting records. Grantees and subgrantees must maintain records which adequately identify the source and application of funds provided for financially assisted activities. These records must contain information pertaining to grant or subgrant awards, authorizations, obligations, unobligated balances, assets, liabilities, expenditures and income.

(c) Internal control. The grantee and subgrantee must establish and maintain effective internal control over the award that provides reasonable assurance that the grantee is managing the award in compliance with statures, regulations, and the terms and conditions of the award. The grantee and subgrantee must take reasonable measures to safeguard protected personally identifiable information and other information the Department considers sensitive consistent with applicable Federal, state, and local laws regarding privacy and obligations of confidentiality. The grantee and subgrantee must adequately safeguard of all assets and property and assure that it is used solely for authorized purposes.

(d) Budget control. Actual expenditures must be compared with budgeted amounts for each grant or subgrant. Financial information must be related to performance or productivity data, including the development of unit cost information whenever appropriate or specifically required in the grant agreement.

(e) Advanced Payments are not permitted with sub awards without expressed written approval of the Grants Management Officer. (see Subpart G)

(f) Allowable costs. Establish procedures in accordance with applicable cost principles (see Subpart H), program regulations, and the terms of the grant and subgrant agreement in determining the reasonableness, allowability, and allocability of cost.

(g) Source Documentation. Accounting records shall be supported by source documentation such as cancelled checks, paid bills, payrolls, time, activity and attendance records, contracts and subgrant award documents, etc. Specific attention should be given to the documentation of costs to activities for employees charged in whole or in part to grant awards.

(h) External and Internal Audits. See Subpart L.

(i) Cash Management. See Subpart F for Cash Management Standards.

5.3 Construction Grants

This subpart applies to Construction Grants except for those sections that are beyond its scope and intent. (See Subpart D)

SUBPART F - CASH MANAGEMENT

6.1 Scope of subpart

This subpart prescribes the cash management standards for minimizing the time elapsing between the transfer of funds from the Department and disbursement by grantees and subgrantees.

6.2 Financial management for subgrantees

(a) Grantee responsibilities

(1) Grantees must establish reasonable procedures to ensure the receipt of reports on subgrantees' cash balances and cash disbursements in sufficient time to enable them to prepare complete and accurate expenditure reports to the granting agency.

(2) Grantees must monitor cash drawdowns by their subgrantees to assure that they conform substantially to the same standards of timing and amount as apply to advances to the grantees.

(b) The granting agency may review the adequacy of the financial management system of any applicant for financial assistance as part of a preaward review or at any time subsequent to award.

6.3 Payment methods

The method of payment will be stipulated in Attachment A of the Notice of Grant Award. Advanced Payments are generally disallowed with few exceptions. Advanced Payment methods are not permitted with sub awards without expressed written approval of the Grants Management Officer.

6.4 Physical segregation and eligibility

Granting agencies shall not impose grant or subgrant terms which:

(a) Require the recipient to use a separate bank account for the deposit of grant or subgrant funds, or

(b) Establish any eligibility requirements for banks or other financial institutions in which recipients deposit grant or subgrant funds.

6.5 Minority-owned banks

Consistent with the national goal of expanding the opportunities for minority business enterprises, grantees and subgrantees are encouraged to use minority-owned banks (a bank which is owned at least 50 percent by minority group members.

6.6 Interest Bearing Account

(a) Funds provided by advance payments, under certain grant conditions as stated in (b) below, will be deposited into an interest bearing account.

(b) For grants less than $120,000 grantees will not be required to deposit funds received on the advanced payment system into an interest bearing account but, if a grantee chooses to deposit the grant funds into an interest bearing account, then the grantee must submit any interest earned over $500 to the Department. If a grantee receives one grant for $120,000 or more, the grantee must deposit all grant funds received on the advanced payment system into an interest bearing account and submit any interest earned over $500 directly to the Office of Financial Services, P.O. Box 360, Trenton, New Jersey 08625-0360. The grantee may keep interest amounts up to $500 per year for administrative expenses.

(c) The Granting Agency will provide the grantee with the required form which must be submitted annually, at the end of the grantee's fiscal year indicating the interest earned.

6.7 Exceptions

Exceptions to this policy may be submitted to the granting agency for consideration and if approved shall be specified in the Notice of Grant Award.

6.8 Effect of program income, refunds, and audit recoveries on payment

Except as provided in paragraph 6.6(a) of this section, grantees and subgrantees shall disburse program income, rebates, refunds, contract settlements, audit recoveries and interest earned on such funds before requesting additional cash payments.

6.9 Construction Grants

This subpart applies to Construction Grants except for those sections that are beyond its scope and intent. (See Subpart D)

SUBPART G - GRANT AND SUBGRANT PAYMENT REQUIREMENTS

7.1 Scope of subpart

This subpart prescribes the basic standard under which the Department will make grant payments to grantees and grantees will make payments to subgrantees.

7.2 Basic standard

Methods and procedures for payments shall minimize the time elapsing between the transfer of funds and disbursement by the grantee or subgrantee.

7.3 Payment methods

The method of payment will be determined by the granting agency at the time of the award.

(a) The Cost Reimbursement Method is standard for all grants. All government agencies, hospitals, and institutions of higher learning must be on the Cost Reimbursement Method of payment.

(b) Advanced Payments are disallowed with some exceptions to small not for profit organizations. A written request, signed by the Chief Fiscal Officer, detailing a financial need and justified with a detailed cash flow analysis is submitted through SAGE Application for the Grants Management Officer's consideration.

(c) For grantees paid on an advance payment basis, the final scheduled payment will be released upon receipt and approval of the Final Report of Grant Expenditures and Progress Report. This payment will be no less than 1/12 of the total grant award.

7.4 Withholding of payments

(a) Unless otherwise required by Federal or State Statute, the granting agencies shall not withhold payments for proper charges incurred by grantees or subgrantees unless:

(1) The grantee or subgrantee has failed to comply with the Terms and Conditions of the grant award, including submission of periodic reports;

(2) The grantee or subgrantee is indebted to the State of New Jersey;

(3) There are unresolved audit problems;

(4) The grant is suspended pursuant to Subpart T.

(b) Cash withheld for failure to comply with grant award condition, but without suspension of the grant, shall be released to grantee upon subsequent compliance. When a grant is suspended, payment adjustments will be made in accordance with Subpart T. When a debt is to be collected, the Department may withhold payments or recorded grant cash balances for which the grantee is accountable to the Department, in order to liquidate the indebtedness.

(c) A granting agency shall not make payment to grantees for amounts that are withheld by grantees or subgrantees from payment to contractors to assure satisfactory completion of work. Payments shall be made by the granting agency when the grantees or subgrantees actually disburse the withheld funds to the contractors or to escrow accounts established to assure satisfactory completion of work.

7.5 Payments to subgrantees

Grantees shall observe the requirements of their organization in making (or withholding) payments to subgrantees, and they must follow the standards established in 6.2 of Subpart F.

7.6 Construction Grants

This subpart applies to Construction Grants except for those sections that are beyond its scope and intent. (See Subpart D)

SUBPART H - ALLOWABLE COSTS

8.1 Limitation on use of funds

Grant funds may be used only for:

(a) The allowable costs of the grantees, subgrantees and cost-type contractors. Allowable cost of grant supported activities is comprised of the allowable direct costs incident to the performance of grant related activities plus the allocable portion of allowable indirect costs of the organizations less applicable credits.

(b) Reasonable fees or profit to cost type contractors, but not any fee or profit (or other increment above allowable costs) to the grantee or subgrantee.

8.2 Applicable cost principles

The Department has adopted the Federal Cost principles for all grants awarded. Allowable costs are determined by the applicable cost principles. Applicable cost principles, definitions, and requirements can be found in 2 CFR Chapter 1, Chapter II, Part 200, et al. "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards". You can view more information by visiting NJ OMB through the following link:
http://www.state.nj.us/treasury/omb/supercircular/index.shtml#J1

8.3 Allowable Costs

Costs must meet certain criteria to be allowable under a grant. Therefore, a cost must:

(a) Be necessary and reasonable and for the proper and efficient administration of the award and be allocable under the appropriate cost principles.

(b) Be authorized or otherwise not prohibited under Federal, State, or local laws or regulations.

(c) Conform to any limitations or exclusions set forth in the cost principles, award document, Federal or State law, terms and conditions of the grant, or other governing regulations as to types and amounts of cost items.

(d) Be consistent with the policies, regulations, and procedures that apply uniformly to grant related activity and other activities performed by the grantee.

(e) Be accorded consistent treatment.

(f) Be determined in accordance with generally accepted accounting principles.

(g) Not be included in or allocable to any other grant support programs in either the current or prior period. This would also include costs used to meet any cost sharing or matching requirements of any other financed program.

(h) Be net of all applicable credits.

(i) Be adequately documented.

(j) Costs, expended or obligated, must be incurred within the grant's approved Budget Period.

8.4 Administrative Costs

The total amount of Administrative Costs as defined in Sub-Part A shall be reviewed by the Grants Management Officer in a manner which will determine the appropriate relationship between direct service and Administrative Costs. Administrative Costs will be evaluated based on allowability and reasonableness and all costs requested may not be approved.

8.5 Cost Control Initiatives

Cost control initiatives are policies of the Department that are imposed on grants to restrict costs in certain cost categories.

(a) Salary compensation Limitation

The amounts paid under this contract to the Provider Agency for employee compensation are subject to the following conditions:

(1) Full-time Salary Compensation Limitation (Not applicable to Physicians or Advanced practice Nurses): use of funds for employee compensation to Provider Agencies will be based on *Gross Revenue* for the entire organization, as corroborated by most recent annual audit report and is as follows:

(a) Over $20 million, grant funds will not exceed the benchmark salary of $141,000 per employee.

(b) Over $10 million, but less than or equal to $20 million, grant funds will not exceed $126,900 per employee (90% of benchmark salary).

(c) Over $5 million, but less than or equal to $10 million, grant funds will not exceed $119,850 per employee (85% of benchmark salary)

(d) Less than $5 million, grants funds will not exceed $105,750 per employee (75% of benchmark salary)

(2) Part-time Salary Compensation Limitation: The salary compensation limitation for a part-time employee, or for an employee whose activities are only partially compensated by the contract, will be calculated by prorating the above dictates from the Full-time Salary Compensation Limitation.
The prorated percentage will be determined by the regular number of work hours for the part-time

employee or number of hours working on the specific duties outlined in the application for a given contract.

(3) Salary Compensation Limitation for Physicians and Advanced Practice Nurses: The amounts paid under this contract to the Provider Agency for Physicians and Advanced Practice Nurses compensation are subject the following conditions:

(a) Grant funds for Physicians and Advanced practice Nurses will not exceed $212,000 per year, regardless of Provider Agency size

(b) Part-time Physicians and Advanced practice Nurses compensation will be calculated pursuant to Section1 (b).

(4) Employee Salaries in Excess of the Limits Prescribed Above: Employee compensation may exceed
the compensation limits described above; however, any salary cost above the amounts listed must be paid from sources other than those received from contracts with the Department of Health and Senior Services.

(5) Applicable Entities and Exceptions:

(a) The Salary Compensation Limitation will apply to cost-reimbursement contracts at the time of contract renewal.

(b) Any fixed/fee-for-service rate contract set prior to the adoption of these policy changes is not subject to the Salary Compensation Limitations 1a-d; however, any fixed/fee-forservice contract established before the adoption of these policy changes that is subsequently renewed at a higher rate is subject to the Salary Compensation Limitations1(a-d).

(c) Any fixed/fee-for-service rate developed for a new program or service in an existing contract is subject to the Salary Compensation Limitations described in 1(a-d).

(d). Any new contract entered into after the adoption date of these policy changes is subject to the Salary Compensation Limitations described in 1a-d.

(b) Compensation Limitation for Employee Travel Expenses:

The amounts paid under this contract to the Provider Agency for staff for in- and out-of-state travel including conference and registration fees, mileage reimbursement, meals and incidental expenses (M&IE),
parking, and overnight lodging accommodations for employees compensated in whole or in part under this contract are subject to the following conditions:

(1.) In-State Provisions: No in-state travel reimbursement may be made in excess of $250.00 per employee, per event without prior written approval from the Department of Health .

(2) Out-of-State Provisions:

(a) All out-of-state travel requires prior approval from the Department of Health unless that travel is no farther than 50 miles from the border of the state where the Provider Agency is located and travel costs do not exceed $250.00 per employee.

(b) Out-of-state travel beyond 50 miles from the border of the state where the Provider Agency is located or with travel costs in excess of $250.00 per employee that was not preapproved by the Department of Health and will not be eligible for reimbursement under this contract.

(3) General Provisions:

(a) In- and out-of-state travel must be directly related to the employee's duties as set forth by the contract and/or required for accreditation/licensure for contracted duties.

(b) No lodging expenses will be funded under this contract for in- and out-of-state travel within 50 miles of the border of the state where the Provider Agency is located.

(c) Mileage reimbursement rates, meals and incidental expenses (M&IE) may not exceed current Federal Reimbursement rates. For information regarding these rates, please visit http://www.gsa.gov.

(c) Compensation Limitation for Employee Tuition Reimbursement

The amounts paid under this contract to the Provider Agency for the tuition reimbursement and related expenses are subject the following conditions:

(1) Employee Education Funding: Funding for educational courses including tuition, textbooks, supplies, etc., will be provided only if such courses are required by the contract licensing, certification, and/or Medicaid standards.

(2) Education Expense Provision: There are monies allocated in the Provider Agency's approved contract budget for the specific educational expenses consistent with (3)(a).

(d) Compensation Restriction for Provider Agency Sponsored Meeting, Special Events, or Conferences

The amounts paid under this contract to the Provider Agency for the cost of administrative meetings, conferences, or special events are subject the following condition:

(1.) Any costs associated with agency sponsored meetings, special events, or conferences held to the conduct of general administration of the agency will not be provided under this contract. Unallowable costs include, but are not limited to, the following: meals and refreshments, entertainment, overnight lodging, receptions, functions held to honor executive/administrative employees.

(e) Criteria for and Processing a Vehicle Request

The Provider Agency may only request a new replacement vehicle, to be paid from monies in this contract, under the following conditions:

(1) Written Approval: The Provider Agency must obtain written approval from the Department of Health to purchase or replace a vehicle. To request this approval, the Provider Agency must provide the following supporting documentation (1-7). The request may be denied even if all supporting documentation is supplied.

(a) Explanation of why requested vehicle is necessary to realize contractual obligations.

(b) Assurance that no single employee will be permanently assigned the vehicle.

(c) Evidence that Provider Agency has the funds needed to cover the vehicle's operating costs for the anticipated useful life of the vehicle.

(d). Inclusion of at least three (3) written bids for vehicles of the same year, make, model, and option package.

(e) If a replacement vehicle, documentation consistent with (5)(b)(1-6) is required.

(f) Any exceptions to the above criteria (5)(a)(1-5), will be dealt with on a case-by-case basis with the department contracting authority.

(g) If the request is approved, Provider Agency will be required to purchase the vehicle from the vendor with the lowest priced bid consistent with (5)(a)(4).

(2) Replacement Vehicle Provision: The Provider Agency may request replacement of an existing vehicle under any of the following conditions:

(a). Odometer reading is in excess of 125,000 miles.

(b) Vehicle age is 10 or more years.

(c) Repair costs to maintain vehicle's operational capacity exceeded 50% of its the current blue book trade-in value over the course of the previous year.

(d) Vehicle was involved in an accident and has been declared "totaled" by insurance carrier.

(e) Per a written request supported by appropriate documentation, declaring the vehicle no longer road worthy or otherwise unsafe.

(3) Maximum Funds Available for Vehicle Purchase: Should the Provider Agency receive approval for the purchase of a vehicle, the maximum cost for that vehicle, including all dealer fees and charges, may not exceed $25,000. This limitation does not apply to passenger vans or specialized and adaptive vehicles for handicapped consumers.

(4) Leasing Vehicles: Vehicles will be purchased and not leased unless a Provider Agency can provide sufficient justification indicating why a leased vehicle would offer greater benefit to the Provider Agency and better use of funds under this contract. Prior approval from the Department of Health contracting authority under the same or similar justification will not bind the Department of Health to approve a subsequent justification; all justifications will be reviewed on a case-by-case basis. If the Provider Agency receives approval to lease a vehicle, the organization will provide the written request and all documentation required by (5)(a). Furthermore, the Provider Agency will include a written assurance that no funds from this contract will be used to pay for any lease agreement closing costs, including usual wear and tear to the vehicle, or any excess mileage charges.

(5) Vehicle Titles: The Department of Health must be listed as the first (1st) Lien Holder on the vehicle title.

(f) New Requirements

(1) Statement of Total Gross Revenue

Provider Agency will include a statement of total gross revenue as determined by the agency's most current annual audit report, or the most recent annual audit report.

(2) Annual Audit Report

Provider Agency will include an electronic copy of its most recent annual organization-wide audit report. This report will be uploaded to SAGE as a Required Attachment during the application process.

(3) Application for Tax Clearance

All contracted agencies are required to complete an Application for Tax Clearance—Business Assistance and Incentives (http://www.state.nj.us/treasury/taxation/busasst.shtml). A Tax Clearance Certificate will be uploaded to SAGE as a Required Attachment during the application process. Tax Clearance Certificates must be acquired before the application submission due date. Failure to acquire the Tax Clearance Certificate will make the application Non-Responsive.

8.6 Construction Grants

This subpart applies to Construction Grants except for those sections that are beyond its scope and intent (See Subpart D).

SUBPART I - PERIOD OF AVAILABILITY OF FUNDS

9.1 General

A grantee may only charge expenditures and obligations to the award when costs have been incurred during the budget period.

9.2 Liquidation of obligations

A grantee must liquidate all obligations incurred under the award no later than 60 days after the end of the budget period.

The Grants Management Officer may extend this deadline at the request of the granting agency.

9.3 Construction Grants

This subpart applies to Construction Grants except for those sections that are beyond its scope and intent. (See Subpart D)

SUBPART J - MATCHING OR COST SHARING

10.1 Scope of subpart

This subpart contains rules for satisfying requirements for cost-sharing or matching. These rules apply whether the cost-sharing or matching is required by statute or by other terms of the grant.

10.2 Basic rule

With the qualifications and exceptions listed in 10.3 a cost-sharing or matching requirement may be satisfied by either or both of the following:

(a) Allowable costs incurred by the grantee, or subgrantee, under the grant or subgrant. This includes allowable costs borne by non-Federal grants or by other cash donations from non-Federal third parties.

(b) The value of third-party in-kind contributions applicable to the period to which the cost-sharing or matching requirement applies.

10.3 Qualifications and exceptions

(a) Cost borne by other grants

(1) Except as provided by statute, a cost-sharing or matching requirement may not be met by cost borne by another grant. This prohibition does not apply to income earned by a grantee or subgrantee from a contract awarded under another grant.

(2) For the purpose of this part, general revenue sharing funds under 31 U.S.C. 6702 are not considered a grant. Therefore, in the absence of any provision of statute to the contrary, allowable costs borne by these funds may count towards satisfying a cost-sharing or matching requirement.

(b) Costs or contributions counted towards other cost-sharing requirements.

Neither costs nor the values of third-party in-kind contributions may count towards satisfying a cost-sharing or matching requirement of another grant, a procurement contract, or any other award of funds.

(c) Cost financed by general program income as defined in Subpart K, shall not count towards satisfying a cost-sharing or matching requirement of the grant unless the terms of the grant expressly permit the income to be used for cost-sharing or matching.

(d) Services or property financed by income earned by contractors.

Contractors under a grant may earn income from the activities carried out under the contract in addition to the amounts earned from the party awarding the contract. No costs of services or property supported by this income may count toward satisfying a cost sharing or matching requirement unless other provisions of the grant agreement expressly permit this kind of income to be used to meet the requirement.

(e) Records.

Costs and third-party in-kind contributions counting towards satisfying a cost-sharing or matching requirement must be verifiable from the records of grantees and subgrantees. These records must show how the value placed on third-party in-kind contributions was derived. To the extent feasible, volunteer services shall be supported by the same methods that the organization uses to support the allocability of its regular personnel costs.

(f) Special standards for third-party in-kind contributions.

(1) Third-party in-kind contributions count towards satisfying a cost-sharing or matching requirement only where, if the party receiving the contributions were to pay for them, the payments would be allowable costs.

(2) Some third-party in-kind contributions are goods and services that, if the grantee or subgrantee receiving the contribution had to pay for them, the payments would have been an indirect costs. Costs sharing or matching credit for such contributions shall be given only if the grantee or subgrantee has established, along with its regular indirect cost rate, a special rate for allocating to individual projects or programs the value of the contributions.

(a) A third-party in-kind contribution to a fixed-price contract may count towards satisfying a cost sharing or matching requirement only if it results in:

(1) An increase in the services or property provided under the contract (without additional cost to the grantee or subgrantee) or

(2) A cost savings to the grantee or subgrantee.

(3) The values placed on third-party in-kind contributions for cost-sharing or matching purposes shall conform to the rules in the succeeding sections of this subpart. If a third-party in-kind contribution is of a type of treated in those sections, the value placed upon it shall be fair and reasonable.

10.4 Valuation of donated services

(a) Volunteer services. Unpaid services provided to a grantee or subgrantee by individuals shall be valued at rates consistent with those ordinarily paid of similar work in the grantee or subgrantees organization. If the grantee or subgrantee does not have employees performing similar work, the rates will be consistent with those ordinarily paid by other employers for similar work in the same labor market. In either case, a reasonable amount for fringe benefits may be included in the valuation.

(b) Employees of other organizations. When an employer other than a grantee or subgrantee furnishes free of charge the services of an employee in the employee's normal line of work, the services will be valued at the employee's regular rate of pay exclusive of the employer's fringe benefits and over head costs. If the services are in a different line of work, paragraph (a) of this section shall apply.

10.5 Valuation of third-party donated supplies and loaned equipment or space

(a) If a third-party donates supplies, the contribution will be valued at the market value of the supplies at the supplies at the time of donation.

(b) If a third-party donates the use of equipment or space in a building but retains title, the contribution will be valued at the fair rental rate of the equipment or space.

10.6 Valuation of donated equipment, buildings, and land

If a third-party donates equipment, buildings, or land, and title passes to grantee or subgrantee, the treatment of the donated property will depend upon the purpose of the grant or subgrant, as follows:

(a) Awards for capital expenditures. If the purpose of the grant or subgrant is to assist the grantee or subgrantee in the acquisition of property, the market value of that property at the time of donation may be counted as cost-sharing or matching.

(b) Other awards. If assisting in the acquisition of property is not the purpose of the grant or subgrant, the following rules apply:

(1) If approval is obtained from the granting agency, the market value at the time of donation of the donated equipment or buildings and the fair rental rate of the donated land may be counted as cost-sharing or matching. In the case of a subgrant, the terms of the grant agreement may require that the approval be obtained from the Department as well as the grantee. In all cases, the approval may be given only if a purchase of the equipment or rental of the land would be approved as an allowable direct cost. If any part of the donated property was acquired with Federal or State funds, only the non-federal share of the property may be counted as cost sharing or matching.

(2) If approval is not obtained under paragraph (b)(1) of this section, no amount may be counted for donated land, and only depreciation or use allowances may be counted for donated equipment and buildings. The depreciation or use allowances for this property are not treated as third-party in-kind contributions. Instead, they are treated as cost incurred by the grantee or subgrantee. They are computed and allocated (usually as indirect costs) in accordance with the cost principles specified in Subpart-H, in the same way as depreciation or use allowances for purchased equipment and buildings.

The amount of depreciation or use allowances for donated equipment and buildings is based on the property's market value at the time it was donated.

10.7 Valuation of grantee or subgrantee donated real property for construction/acquisition

If a grantee or subgrantee donates real property for a construction or facilities acquisition project, the current market value of that property may be counted as cost sharing or matching. If any part of the donated property was acquired with Federal or State funds, only the non-federal and State share of the property may be counted as cost sharing or matching.

10.8 Appraisal of real property

In some cases under 10.5, 10.6 and 10.7, it will be necessary to establish the market value of land or a building or the fair rental rate of land or of space in a building. In these cases, the granting agency may require the market value or fair rental rate be set by a independent appraiser, and that the value or rate be certified by the grantee. This requirement will also be imposed by the grantee to subgrantees.

10.9 Construction Grants

This subpart applies to Construction Grants except for those sections that are beyond its scope and intent. (See Subpart D)

SUBPART K - PROGRAM INCOME

11.1 General

Grantees are encouraged to earn income to defray program costs. Program income means gross income earned by a grantee or subgrantee that is directly generated by a grant supported activity or earned as a result of the award. Program income includes, but is not limited to income from fees for services performed, from the use or rental of real or personal property acquired with grant funds, from the sale of commodities or items fabricated under a grant agreement. Except as otherwise provided in regulations of the State, or Federal agency, program income does not include interest on grant funds, rebates, credits, discounts, refunds, etc. and interest earned on any of them.

Grantees who generate revenue from activities that are not supported in whole or in part with our grant funds may keep the program income as long as the agency can demonstrate that no DOH grant funds are used to support the non-grant related activity.

11.2 Cost of generating program income

If authorized by State or Federal regulations or the grant agreement, costs incident to the generation of program income may be deducted from gross income to determine program income.

11.3 Government revenues

Taxes, special assessments, levies, fines, and other such revenues raised by a grantee or subgrantee are not program income unless the revenues are specifically identified in the grant agreement.

11.4 Royalties

Income from royalties and license fees for copyrighted material, patents, and inventions developed by a grantee or subgrantee is program income only if the revenues are specifically identified in the grant agreement or Federal agency regulations as program income.

11.5 Property

Proceeds from the sale of real property or equipment will be handled in accordance with the requirements of Subpart N.

11.6 Use of program income

Program income shall be deducted from total expenditures as described below, unless the granting agency regulations or the grant agreement specify another alternative (or a combination of the alternatives). In specifying alternatives the granting agency may distinguish between income earned by the grantee and income earned by subgrantees and between the sources, kinds, or amounts of income. When granting agencies are authorized to use alternatives in paragraphs 11.6 (a) and (b) of this section, program income in excess of any limits stipulated shall also be deducted from expenditures.

(a) Deduction. Ordinarily program income shall be deducted from total allowable costs to determine the net allowable costs. Program income shall be used for current costs unless the granting agency authorizes otherwise. Program income which the grantee did not anticipate at the time of the award shall be used to reduce the grant award and grantee contributions rather than to increase the funds committed to the project.

(b) Addition. When authorized, program income may be added to the funds committed to the grant agreement by the granting agency. The program income shall be used for the purposes and under the conditions of the grant agreement.

(c) Cost sharing or matching. When authorized, program income may be used to meet the cost sharing or matching requirement of the grant agreement. The amount of the grant award remains the same.

11.7 Interest earned on advances of grant funds

(a) Interest income earned from the scheduled advance payment system in Subpart F is not program income, and interest income of $500 or more must be paid to the Department.

11.8 Construction Grants

This subpart applies to Construction Grants except for those sections that are beyond its scope and intent. (See Subpart D)

SUBPART L - AUDITS

12.1 Basic rule

(a) The New Jersey Single Audit Policy as established by the New Jersey Treasury Department in Circular Letter 15-08-OMB requires that grantees of funds from the State of New Jersey must have an audit performed in accordance with the United States Council on Financial Assistance Reform (COFAR) Code of Federal Regulations (C.F.R.) 2 C.F.R. 200: Uniform Guidance.

(b) Granting agencies may not impose additional audit requirements on grantees or sub-grantees.

(c) Audits must be made by an independent auditor in accordance with generally accepted government auditing standards covering financial and compliance audits.

12.2 Definition

(a) Grantee is a recipient and a subgrantee is a subrecipient.

12.3 Single Audit Policy

12.3 Audit Policy (complete change)
(a) The State Single Audit Policy may be found at the following website address:
http://www.state.nj.us/infobank/circular/circindx.htm

(b) For fiscal years beginning after December 26, 2014, all State agencies that disburse Federal grant, State grant, or State aid funds to grantees that expend $750,000 or more in federal financial assistance or State financial assistance within their fiscal year must require these grantees to have annual single audits or program-specific audits performed in accordance with the Act, Amendments, Subpart F – Audit Requirements (of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards) and State policy. It should be noted that the federal government will not pay for the costs of auditing a grantee that is exempted from having an audit conducted under the Act and Subpart F – Audit Requirements because its expenditures under federal awards are less than $750,000 during the grantee's fiscal year.

(c) All State agencies that disburse federal grant, State grant or State aid funds to grantees that expend less than $750,000 in federal or State financial assistance within their fiscal year, but expend $100,000 or more in State and/or federal financial assistance with their fiscal year, must require these grantees to have either a financial statement audit performed in accordance with Government Auditing Standards (Yellow Book) or a program-specific audit performed in accordance with the Act, Amendments, Subpart F – Audit Requirements (of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards) and State policy.

(d) Program-specific audits in accordance with Subpart F – Audit Requirements (of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards) can be elected when a grantee expends federal or State awards under only one federal or State program and the federal or State program's statutes, regulations, or terms and conditions of the grant award do not require a financial statement audit of the grantee.

(e) Although Subpart F – Audit Requirements allows specific provisions for biennial audits; State policy continues to require all audits to be performed on an annual basis.

(f) In addition to federally required reports and opinions, grantee single audits must contain similar reports and opinions for State grant and State aid funds.

(g) Auditors should use the risk based approach for federal programs as described in Federal Subpart F – Audit Requirements, Section 200.518 to determine which State programs are major programs. Auditors should also use the criteria outlined in Sections 200.519 and 200.520 when making risk determinations for State programs.

(h) Grantee single audit reports, as well as yellow book and program specific reports, must include a supplementary schedule of the entity's State grant and State aid financial assistance programs. The schedule entitled Schedule of Expenditures of State Financial Assistance must show for each State grant:

- State Grantor Department
- Program Title/Name
- State Grant Award Number or Account Number
- Grant Award Period
- Fiscal Year Grant Expenditures
- Total Grant Expenditures to Date

(i) Unless a funding department's policy requires an earlier submission, audit reports are due nine months after the end of the audit period. Funding departments must include audit

report due dates in standard grant agreements.

(j) Each department must maximize the recovery of federal audit costs (as direct or indirect) in accordance with Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, to fund federal monitoring positions.

(k) Any State department that mandates audit requirements, above and beyond the minimum federal and State requirements, is responsible for funding the additional audit work performed. Additional audit requirements must be communicated to the grantee and the State Cognizant Department Single Audit Contact at least 180 days prior to the grantee's fiscal year end.

(l) State Cognizant Departments must update the Grantee Single Audit Tracking System on a timely basis.

(m) In instances of reported grantee noncompliance with material terms and conditions of grant agreements or State and federal laws and regulations, State agencies must ensure that appropriate corrective action is initiated within six months after receipt of the audit report.

12.4 Responsibility of cognizant agency

(a) It is the State Cognizant Audit Agency's responsibility to ensure that audits are completed by grantee's and subgrantee's independent public accountant, as defined by the State Board of Certified Public Accountants, and reports received in a timely manner and in accordance with the requirements of the single audit policy.

(b) At least three (3) months prior to the end of the grantee's fiscal year, the Department for the agencies it is the cognizant audit agency designated by the State of New Jersey, will notify the grantee of its audit responsibility. The grantee shall receive policy statements informing the grantee and the grantee's public accountant of the Department's audit requirement.

(c) In addition, all grantees that expend $100,000 or more of grant funds will be notified to submit their audit plan. This would be either a yellow book or grant specific audit, or single audit as noted above.

12.5 Single Audit Policy Limitations

(a) The Single Audit Policy does not replace any existing requirements for an economy and efficiency audit or for a program results audit. Nor does the single audit eliminate the responsibility the granting agency has to maintain proper oversight of assistance programs. However, any such additional audit must be planned to avoid unnecessary duplication and must either be performed by or arranged for and paid for by the granting agency. Any additional audit must "build upon" the single audit, and not duplicate what has already been performed.

12.6 Access to grantee records and public accountants workpapers

(a) As an integral part of the Single Audit Policy the Department reserves the right to access to the grantees/subgrantees records to insure proper monitoring reviewing functions as required in Section 19.5

(b) Access to grantee's/subgrantee's public accountant's workpapers supporting their opinions relating to the grantee's/subgrantee's financial and compliance statements and ample time to review the same is reserved by the Department in this section.

(c) The exclusion from the Single Audit Policy does not limit access to the overall certified audit or overall accounting records of the grantee/subgrantee. Under certain circumstances the Department reserves the right to review the same to comply with the Single Audit Policy and Section 19.5 of this document.

12.7 Completion of the audit

(a) The grantee will ensure that an independent auditor, approved by the Department, completes the audit within nine months after the end of the grantee or subgrantee's fiscal year.

(b) The grantee will ensure that appropriate corrective action is taken within six months after receipt in instances of noncompliance with State and Federal regulations and the terms of the grant award.

12.8 Auditor selection

(a) In arranging for audit services Subpart O, Procurement, Section 15.2 shall be followed.

12.9 Audit costs

The costs of an audit may be an eligible expense to the grant. The cost must be treated consistently with appropriate cost principles, see Subpart H, Section 8.1.

The Department reserves the right to disallow audit costs if the audit report is not consistent with the terms of this Subpart.

12.10 Submission of Audit Report

The grantee shall submit an annual audit report nine months after the end of its fiscal year. The annual audit report is to be submitted to the Department's Office of Financial Services, Audit Control, P.O. Box 360, Trenton, New Jersey 08625-0360. Failure to submit the required annual audit report to the Department may result in termination or suspension of grants to the grantee and the grantee will not be considered for future funding.

12.11 Penalties

(a) No audit cost can be charged to a grant unless the audit has been performed in compliance with the applicable circular.

(b) The following restrictions may apply if the audit is not completed in a satisfactory manner.

(1) Withhold a percentage of the grant award until the audit is completed satisfactorily, or

(2) Withhold or disallow the cost of the audit, or

(3) Suspend the grant award until the audit is completed.

12.12 Construction Grants

This subpart applies to Construction Grants except for those sections that are beyond its scope and intent. (See Subpart D).

12.13 Consortium or Lead Agency Audit Requirement

(a) Grantees that are considered a consortium or lead agency shall ensure that their audit report incorporates each subgrantee's applicable financial results as part of the audit report of the consortium or lead agency. Audit reports must include as part of the supplementary data, the Schedule of Expenditures of State Financial Assistance for each State grant and each subgrantee. The consortium or lead agency shall ensure that each subgrantee is in compliance with the Terms and Conditions of the grants along with Federal, State, and Department audit policies.

SUBPART M - PROGRAM CHANGES AND BUDGET REVISIONS

13.1 Scope and applicability of this subpart

The grant application and grant agreement are usually based on the best estimate or plan of program activities and expenditures. It is almost inevitable that some changes or unanticipated circumstances will occur. In many programs, revisions are common and expected. The most common change, for example, is simply a shift of dollars from one budget line-item to another.

A number of actions or changes require the approval of the granting agency. Grants are also subject to many prior-approval requirements, which extend to both grantee and subgrantee costs. Prior approval is defined as "documentation evidencing consent prior to incurring specific costs." All requests must be initiated, processed, and approved electronically. Prior approval entails advance written permission from the Department's authorized Grants Management Officer. Notes of a telephone conversation with a Program Management Officer would not constitute prior approval.

There is a difference between a Budget Revision and an Amendment. A budget revision changes the line-item budget without increasing or decreasing the approved budget. A grant amendment changes the contractual agreement between the Grantee and Granting Agency. An Amended includes an increase or decrease in the approved budget, a change in scope of the activities, and a change in the grant period. An amendment requires all approvals including the Department's Approval Officer.

Grantees should obtain prior approval from the Department's Grants Management Officer. Approval of the budget line items in the Notice of Grant Award (NOGA) constitutes "prior approval" for the performance of activities and expenditures for the specific purposes and items described in the grant application unless otherwise restricted by the Notice of Grant Award.

Grantees and subgrantees are permitted to rebudget within the approved direct cost budget to meet unanticipated requirements and may make limited program changes to the approved project. However, unless waived by the granting agency, certain types of post-award changes in budgets and activities shall require the prior written approval of the granting agency.

13.2 Relationship to cost principles

The applicable cost principles for prior approvals of certain types of costs can be found in 2 CFR Chapter 1, Chapter II, Part 200, et al. "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards". Listed below is a summary of the current approval requirements:

(a) **Costs Incurred by Local Governments**

(1) Advisory council (or committee) costs not required by the grant terms and conditions.

(2) Depreciation or use allowance on idle or excess facilities.

(3) Costs of publishing grant accomplishments or results.

(4) Costs of out-of-service training involving extended periods of time.

(5) Purchase of data processing equipment.

(6) Space procured for grant program usage during periods of non-occupancy.

(7) Rearrangement and allocation of facilities.

(8) Space procured under a rental-purchase or lease-with-option-to-purchase agreement.

(9) Equipment and other capital expenditures.

(10) Insurance on property owned by the Granting Agency.

(11) Uninsured losses (including property losses and liabilities to third parties) that could have been covered by insurance (except nominal deductible amounts or other minor uninsured losses such as ordinary spoilage, breakage, etc.)

(12) Management studies by outside sources.

(13) Pre-award costs.

(14) Costs of preparing grant applications.

(b) **Costs Incurred by Non-Profit Organizations**

(1) Purchase of general purpose equipment.

(2) Purchase of special purpose equipment with a unit cost of $5000 or more.

(3) Capital expenditures for land or buildings.

(4) Capital expenditures for improvements to land, buildings, or equipment that materially increase their value or useful life.

(5) Fines and penalties.

(6) Cost of actual losses that could have been covered by insurance.

(7) Indemnification, including securing against liabilities to third persons, and any other loss or damage.

(8) Organization costs.

(9) Certain overtime, extra-pay shift, and multi-shift premiums.

(10) Direct costs for participants or trainees in connection with meetings, conferences, symposia, or training projects.

(11) Pre-award costs.

(12) Patent infringement costs.

(13) Publication and printing as direct costs.

(14) "Special" arrangement and alteration costs incurred specifically for the project.

(15) Abnormal or mass severance pay.

(16) Training and education costs in excess of those otherwise allowable.

(17) Foreign travel as a direct cost.

(c) **Costs Incurred by Institutions of Higher Education**

(1) Equipment and other capital expenditures with a unit cost of $5000.

(2) Consulting fees (above and beyond salary) for intra-university consulting by a faculty member.

(3) Insurance on property owned by the granting agency.

(4) Uninsured losses (including property losses and liabilities to third parties) which could have been covered by permissible insurance (except nominal deductible amounts or other minor uninsured losses such as ordinary spoilage, breakage, etc.).

(5) Pre-award costs.

(6) Costs of filing patent applications.

(7) Professional services cost of patent infringement litigation.

(8) Special rearrangement and alteration costs incurred specifically for the project.

(9) Compensation of faculty members in excess of base salary.

(10) Student aid or activity.

(11) Fines and penalties.

(12) Change in depreciation method used to charge for the use of assets.

(13) Severance payments due to abnormal or mass terminations.

(14) Advertising. Costs of advertising other than those incurred for recruitment of personnel, procurement of goods and services, or disposal of scrap or surplus.

(15) Public relations. Costs of community relations other than those directly related to sponsored agreements or matters of public concern (e.g., notices of awards, financial matters, etc.)

(16) Employee morale, health and welfare costs. Losses sustained when purposely subsidizing activities aimed at improving of working conditions, employer-employee relations, employee morale, and employee performance.

Please refer to the applicable cost principles for additional requirements and definitions of terms.

13.3 Budget changes

For projects which involve cost-sharing or matching, approved budgets shall ordinarily consist of a single set of figures covering total project cost (the sum of the granting agency's share and the grantee's share). However, the granting agency may specify that the recipient's share not be included in the approved budget.

Some grants and subgrants encompass two or more programmatic segments (such as discrete programs, projects, functions, or types of activities). In these cases, if the granting agency has approved separate budgets by activities, etc., any changes among the anticipated cost of each programmatic activity will require prior approval.

(a) Nonconstruction projects. Except as stated in the grant award document, grantees, or subgrantees shall obtain the prior approval of the granting agency whenever any of the following changes are anticipated under a nonconstruction award:

(1) Result in a need for the award of additional funds, e.g., an increase in the base upon which indirect costs are calculated which will increase allocable indirect costs and result in a claim for a supplementary award.

(2) Grant awards that are for $150,000 or less do not require prior approval for budget revisions between line items, except for those items referenced in the applicable cost principles and other sections of this subpart. For example, equipment, subgrants, and professional service contracts require prior written approval from the granting agency.

Grant awards that are more than $150,000 require an approved Budget Revision Request for transfers among direct cost categories, programs, functions, and activities when the cumulative amount of transfers exceeds, or is expected to exceed, 10 percent of the last approved budget. In other words, when the total line-item changes of transfers out plus the transfers add up to 10% of the currently approved award you need prior approval. All transfers must be consistent with the original intent of the award. See two examples shown below.

<u>An example where no revision is required</u>. An award is approved for $200,000 and the budgeted line item expenditures are reducing Program and Related Costs by 8,000 and increasing Salaries and Wages by $6,000 and increasing Facilities Costs by $2,000. Under this scenario there is no budget revision required because the cumulative total is less than $20,000 ($200,000 x 10%). Note that $8,000 + $6,000 + $2,000 equal $16,000 that is less than the $20,000.

<u>An example where a revision is required</u>. An award is approved for $200,000 and the budgeted line item expenditures are reducing Program and Related Costs by $12,000 and increasing Salaries and Wages by $10,000 and increasing Facilities Costs by $2,000. Under this scenario a budget revision is required because the cumulative total is equal to, or more than, $20,000 ($200,000 x 10%). Note that $12,000 + $10,000 + $2,000 equal $24,000 that is more than the $20,000.

(3) Transfer of funds allotted for training allowances (i.e., from direct payments to trainees to other expense categories).

(4) Any line item not approved in the original budget.

(5) Direct to indirect. Using amounts budgeted for direct costs to absorb increases in indirect costs (non-governmental grantees only).

(6) Indirect to direct. Using amounts budgeted for indirect costs to absorb increases in direct costs (non-governmental grantees only).

(7) Liquidation of obligations. Liquidation of obligations more than 60 days after the end of the budget funding.

(8) Information collection. Collection of information from others if they are told that the information is being collected for or on behalf of the granting agency.

(9) Reporting. Any change in the prescribed frequency or due date of reports.

(10) Restrictions in the grant award. Using funds for any purpose or type of cost that was expressly disapproved as a condition of the grant.

(11) Charges to pre-approved advanced memorandums of understanding regarding certain costs. If arrangements have been made to incur or record costs in a manner differing from normal practices permitted under applicable cost principles, any changes to the advanced memorandum of understanding will require prior approval.

(b) Constructions projects. Grantees and subgrantees shall obtain prior written approval for any budget revision which would result in the need for additional funds or substantially change the approved construction plan.

(c)Combined construction and nonconstruction projects. When a grant or subgrant provides funding for both construction and nonconstruction activities, the grantee or subgrantee must obtain prior written approval from the granting agency before making any fund or budget transfer from nonconstruction to construction or vice versa.

13.4 Programmatic changes

(a) Grantees or subgrantees must obtain the prior approval of the granting agency whenever any of the following actions is anticipated:

(1) Any revision of the scope or objectives of the project (regardless of whether there is an associated budget revision requiring prior approval).

(2) Need to extend the period of availability of funds.

(3) Changes in key persons in cases where specified in an application or a grant award. In research projects, a change in the project director or principal investigator shall always require approval unless waived by granting agency. In standard Health Service Awards it is the Principle Program Contact identified in Organizational Information Review page.

(4) To continue a project during any continuous period of more than 3 months without the active direction of an approved project director, or to replace the project director or any other persons named and expressly identified as key project people in the notice of grant or subgrant award or to permit any such people to devote substantially less effort to the project than was anticipated when the grant or subgrant was awarded.

(5) Transferring substantive programmatic work. Subgranting, contracting or otherwise transferring substantive project activities to a third party.

(6) Certain third party in-kind match. In-kind match at fair market rental rate for donated land or at full market value for donated equipment or buildings (not applicable to grants for capital expenditures or construction grants).

(7) Transfer of title. Transfer to a third party title to real property acquired under a grant.

(8) Procurement.

(a) Non-competitive contracts. Procurements over $25,000 which are sole source or without competition and contract modifications or change orders or specify a "brand name" product, unless price reasonableness can be determined on the basis of catalog or market price or on prices set by law or regulations (local governments only).

(b) Non-competitive contracts. Contracts awarded on a non-competitive or sole-source basis (universities, hospitals, and non-profits only).

(c) Awards to other than the low bidder. Proposed awards over $25,000 to other than the apparent low bidder under a sealed bid procurement (local governments only).

(d) Contract modifications. A proposed contract modification changing the scope of a contract or increasing the contract amount by more than $25,000 (local governments only).

(9) Program Income - Addition or matching use of income. Use of program income fund to meet cost sharing or matching requirements or added to the funds already committed to the grant.

(10) Additional prior approval requirements. The granting agency may not require prior approval for any budget revision which is not described in this Subpart or as a special condition based on Subpart A, section 1.5.

13.5 Requesting prior approval.

(a) A request for prior approvals for any budget revision will be in the same budget format used in the grantee's application and shall be accompanied by a narrative justification for the proposed revision. Most granting

agencies will require the submission of the standard Budget Revision Request form.

(b) A request for a prior approval under the applicable cost principles (see Subpart H) may be made by letter.

(c) Grantees requesting a prior approval required by this subpart shall address their requests to the responsible Grants Management Officer of the granting agency. The request shall not be valid unless it is in writing and signed by the authorized official designated by the granting agency. The request may be submitted electronically.

(d) For subgrantees, a request for prior approval will be addressed in writing to the grantee. The grantee will promptly review such request and shall approve or disapprove the request in writing. A grantee will not approve any budget or project revision which is inconsistent with the purpose or terms and conditions of the grant to the grantee. If the revision, requested by the subgrantee would result in a change to the grantee's approved project which requires prior approval, the grantee will obtain the granting agency's approval before approving the subgrantee's request.

(e) Retroactive Approval

A grantee or subgrantee which fails to obtain a required prior approval may be permitted to request approval after the fact. Requests for retroactive approval will be entertained only in instances where:

(1) the transaction would have been approved had approval been requested in advance;

(2) the transaction is approved by both the Grants Management Officer and the Program Management Officer, who has the authority to grant such approval; and,

(3) the organization (grantee) agrees to institute controls to ensure that prior approval requirements are met in the future.

13.6 Timing

Within 30 days from the date of receipt of a request for prior approval, the granting agency shall review the request and notify the grantee of its decision. If the request for approval is still under consideration at the end of 30 days, the granting agency shall inform the grantee in writing or electronically as to when to expect the decision.

13.7 Grant changes

Changes to an approved grant shall be considered by the granting agency if the grantee has submitted on a timely basis the required performance and expenditure reports as stipulated in the notice of grant award. Failure to have conformed with these requirements may result in the disapproval of a request by the granting agency.

13.8 Other changes

(a) The Department may request changes in the scope of the services of the grantee to be performed hereunder. Such changes, including any increase or decrease in the amount of the grantee's compensation, which are mutually agreed upon by and between the Department and the grantee must be incorporated in written amendments to this grant.

(b) If the grantee is making program expenditures or providing grant services at a rate which, in the judgement of the granting agency, will result in substantial failure to expend the grant amount or provide grant services, the Department may so notify the grantee. If, after consultation, the grantee is unable to develop to the satisfaction of the granting agency a plan to rectify its low level of program expenditures or grant services, the Department may, upon thirty (30) days notice to the grantee reduce the grant amount by a sum so that the revised amount fairly projects program expenditures over the grant period. This reduction shall take into the account the grantee's fixed costs and shall establish the level of services for each program element of grant services at the reduced grant amount.

13.9 Costs allowable with approval

(a) Cost principles identifies certain costs that, in order to be allowable, must be approved by the granting agency (see 13.2). Costs cannot be considered allowable under grants unless they:

(1) are necessary, reasonable, and allocable to the grant program;

(2) are to comply with the limitations of a grant agreement;

(3) are allocated to the grant on a basis consistent with policies that apply to all activities of the grantee;

(4) are accounted for consistently and in accordance with generally accepted accounting principles; and,

(5) have not been allocated to or included in the cost of any other grant program.

(b) The following procedures govern approval of these costs.

(1) When costs are treated as indirect costs (or are allocated pursuant to an agency-wide cost allocation plan), acceptance of the costs as part of the indirect cost rate or cost allocation plan shall constitute approval.

(2) When the costs are treated as direct costs:

(a) They must be approved in advance by the granting agency.

(b) If the costs are specified in the budget, approval of the budget shall constitute approval of the costs.

(3) In the case of subgrants, no approval shall be given which is inconsistent with the purpose or the terms of the grant.

13.10 Construction Grants

This subpart applies to Construction Grants except for those section that are beyond its scope and intent. (See Subpart D)

SUBPART N – REAL PROPERTY, EQUIPMENT, SUPPLIES AND COPYRIGHTS

14.1 Scope and applicability of this subpart

(a) This subpart applies to real property, equipment and supplies acquired with grant support. To be considered acquired with grant support, some or all of the property's acquisition cost must be a direct cost under the grant or a subgrant, and must be borne by grant funds or program incoming funds earned as the result of our grant.

(b) This subpart also deals with inventions, patents, and copyrights arising out of activities assisted by a grant or subgrant.

(c) This subpart does not apply to:

(1) Property for which only depreciation or use allowances are charged;

(2) Property donated entirely as a third-party in-kind contribution; or

(3) Equipment or supplies acquired primarily for sale or rental rather than for use.

14.2 Prohibition against additional requirements

Grantees and subgrantees may follow their own property management policies and procedures: Provided, they observe the requirements of this subpart. Granting agencies and grantees may not impose on recipients property requirements (including property reporting requirements) not authorized by this subpart unless specifically approved by the Department Grant Approval Officer.

14.3 Title

Subject to the obligations and conditions set forth in this subpart, title to real property, equipment and supplies acquired under a grant or subgrant shall vest upon acquisition in the grantee or subgrantee respectively.

14.4 Real property

(a) Use. Except as otherwise provided by State or Federal statutes real property will be used for the originally authorized purposes and the grantee or subgrantee shall not dispose of or encumber its title or other interest.

(b) Disposition. When real property is no longer needed for the originally authorized purpose, the grantee or subgrantee will request disposition instructions from the granting agency. The instructions will provide for one of the following alternatives:

(1) Retention of title. Retain title after compensating the granting agency. The amount paid to the granting agency will be computed by applying the granting agency's percentage of participation in the cost of the original purchase to the fair market value of the property. However, in those situations where a grantee or subgrantee is disposing of real property acquired with grant funds and acquiring replacement real property under the same program, the net proceeds from the disposition may be used as an offset to the cost of the replacement property.

(2) Sale of property. Sell the property and compensate the granting agency. The amount due to the granting agency will be calculated by applying the granting agency's percentage of participation in the cost of the original purchase to the proceeds of the sale after deduction of any actual and reasonable selling and fixing-up expenses. If the grant is still active, the net proceeds from sale may be offset against the original cost of the property. When a grantee or subgrantee is directed to sell property, sales procedures shall be followed that provide for competition to the extent practicable and result in the highest possible return.

(3) Transfer of title. Transfer title to the granting agency or to a third-party designated/approved by the granting agency. The grantee or subgrantee shall be paid an amount calculated by applying the grantee or subgrantee's percentage of participation in the purchase of the real property to the current fair market value of the property.

(c) Purchase requirements. The purchase of real property with grant funds will require the following minimum requirements in Attachment C, Program Specifications:

(1) A period of time will be given for use of the facility for its stated purpose.

(2) A survey and an appraisal of the property and an inspection report on its physical conditions.

(3) A clear title of the property as certified by a reputable title insurance company.

(4) A promissory note in the amount of the grant award will be executed and delivered to the granting agency. The amount of the note will be reduced by an amount to be determined for each full year of the obligation.

(5) The Department is exempt from any and all liability regarding its purchase or construction on the property.

(6) The grantee must, at a minimum, provide the equivalent insurance coverage to real property and equipment acquired or improved with grant funds as provided to property owned by the grantee.

(7) A lien will be placed on the property in a decreasing amount equal to the amortization of the grant amount.

14.5 Equipment

(a) Use (1) Equipment shall be used by the grantee or subgrantee in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by grant funds. When no longer needed for the original program or project, the equipment may be used in other activities currently or previously supported by the Department.

(2) The grantee or subgrantee shall also make equipment available for use on other projects or programs currently or previously supported by the State or Federal Government, providing such use will not interfere with the work on the projects or program for which it was originally acquired. First preference for other use shall be given to other programs or projects supported by the granting agency. User fees should be considered if appropriate.

(3) Notwithstanding the encouragement in Subpart K to earn program income, the grantee or subgrantee must not use equipment acquired with grant funds to provide services for a fee to compete unfairly with private companies that provide equivalent services, unless specifically permitted or contemplated.

(4) When acquiring replacement equipment, the grantee or subgrantee may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property, subject to the approval of the granting agency.

(b) Management requirements. Procedures for managing equipment (including replacement equipment), whether acquired in whole or in part with grant funds, until disposition takes place will, as a minimum, meet the following requirements:

(1) Property records must be maintained that include a description of the property, a serial number or other identification number, the source of property, who holds title, the acquisition date, and cost of the property, percentage of grant participation in the cost of the property, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.

(2) A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.

(3) A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft shall be investigated.

(4) Adequate maintenance procedures must be developed to keep the property in good condition.

(5) If the grantee or subgrantee is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return.

(c) Disposition. When original or replacement equipment acquired under a grant or subgrant is no longer needed for the original project or program or for other activities currently or previously supported by a granting agency, disposition of the equipment will be made as follows:

(1) Items of equipment with a current per-unit fair market value of less than $5,000 may be retained, sold or otherwise disposed of with no further obligation to the granting agency.

(2) Items of equipment with a current per-unit fair market value in excess of $5,000 may be retained or sold and the granting agency shall have a right to an amount calculated by multiplying the current market value or proceeds from sale by the awarding agency's share of the equipment.

(3) In cases where a grantee or subgrantee fails to take appropriate disposition actions, the granting agency may direct the grantee or subgrantee to take excess and disposition actions.

(d) Grant equipment. In the event a grantee or subgrantee is provided with equipment:

(1) Title will remain vested in the State Government.

(2) Grantees or subgrantees will manage the equipment in accordance with agency rules and procedures, and submit an annual inventory listing.

(3) When the equipment is no longer needed, the grantee or subgrantee will request disposition instructions from the granting agency.

(e) Right to transfer title. The granting agency may reserve the right to transfer title named by the granting agency when such a third-party is otherwise eligible under existing statues. Such transfers shall be subject to the following standards:

(1) The property shall be identified in the grant or otherwise made known to the grantee in writing.

(2) The granting agency shall issue disposition instruction within 120 calendar days after the end of the support of the project for which it was acquired. If the granting agency fails to issue disposition instructions within the 120 calendar day period the grantee shall follow 14.5 (c).

(3) When title to equipment is transferred, the grantee shall be paid an amount calculated by applying the percentage of participation in the purchase to the current fair market value of the property.

14.6 Supplies

(a) Disposition. If there is a residual inventory of unused supplies exceeding $5,000 in total aggregate fair market value upon termination or completion of the award, and if the supplies are not needed for any other sponsored programs or projects, the grantee or subgrantee shall compensate the granting agency for its share.

14.7 Copyrights

The granting agency reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Department purposes:

(a) The copyright in any work developed under a grant, subgrant, or contract under a grant or subgrant; and

(b) Any rights of copyright to which a grantee, subgrantee or a contractor purchases ownership with grant support.

14.8 Construction Grants

This subpart applies to Construction Grants except for those sections that are beyond its scope and intent. (See Subpart D)

SUBPART O - PROCUREMENT

15.1 Procurements subject to this subpart

(a) This subpart applies to grantees and subgrantees procurements of supplies, equipment and services (including construction).

(b) This subpart applies if any part of the cost of the property or services being procured by a grantee or subgrantee is treated as a direct cost under a grant or subgrant and is either borne by grant funds or counted toward satisfying a cost-sharing or matching requirement of the grant.

(c) This subpart does not apply to the acquisition of property or services by one government from another government or by one agency or instrumentality of a government from another agency or instrumentality of the same or another government.

15.2 Procurement standards

(a) (1) Grantees and subgrantees will use their own procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements also conform to applicable Federal law and the standards identified in this section.

(2) Grantees and subgrantees will maintain a contract administration system which ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders. Grantees and subgrantees must have written procedures for selecting procurement transactions that reflect applicable Federal, State, local laws, regulations, and standards.

(3) Grantees and subgrantees will maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer or agent of the grantee or subgrantee shall participate in selection, or in the award or administration of a contract supported by State or Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

(i) The employee, officer or agent,

(ii) Any member of his immediate family,

(iii) His or her partner, or

(iv) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The grantee's or subgrantee's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements. Grantee and subgrantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's and subgrantee's officers, employees, or agents, or by contractors or their agents. The granting agency may in regulation provide additional prohibitions relative to real, apparent, or potential conflicts of interest.

(4) Grantee and subgrantee procedures will provide for a review of proposed procurements to avoid purchase of unnecessary or duplicative items and to promote efficiencies. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

(5) To foster greater economy and efficiency, grantees and subgrantees are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services.

(6) Grantees and subgrantees are encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

(7) Grantees and subgrantees are encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

(8) Grantees and subgrantees will make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

(9) Grantees and subgrantees will maintain records sufficient to detail the significant history of a procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(10) Grantees and subgrantees will use time and material type contracts only:

(i) After a determination that no other contract is suitable, and

(ii) If the contract includes a ceiling price that the contractor exceeds at its own risk.

(11) Grantees and subgrantees alone will be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to source evaluation, protests, disputes, and claims. These standards do not relieve the grantee or subgrantee of any contractual responsibilities under its contracts.

Violations of law will be referred to the local, State, or Federal authority having proper jurisdiction.

(12) Grantees and subgrantees will have protest procedures to handle and resolve disputes relating to their procurements and shall in all instances disclose information regarding the protest to the granting agency. A protestor must exhaust all administrative remedies with the grantee and subgrantee before pursuing a protest with the granting agency. Reviews of protests by the granting agency will be limited to:

(i) Violations of Federal law or regulations and the standards of this section (violations of State or local law will be under the jurisdiction of State or local authorities) and

(ii) Violations of the grantee's or subgrantee's protest procedures for failure to review a complaint or protest.

Protests received by the granting agency other than those specified above will be referred to the grantee or subgrantee.

(b) Competition

(1) All procurement transactions will be conducted in a manner providing full and open competition consistent with the standard of Subpart O. Some of the situations considered to be restrictive of competition include but are not limited to:

(i) Placing unreasonable requirements on firms in order for them to qualify to do business,

(ii) Requiring unnecessary experience and excessive bonding,

(iii) Noncompetitive pricing practices between firms or between affiliated companies

(iv) Noncompetitive awards to consultants that are on retainer contracts,

(v) Organizational conflicts of interest,

(vi) Specifying only a "brand name" product instead of allowing "an equal" product to be offered and describing the performance of other relevant requirements of the procurement, and

(vii) Any arbitrary action in the procurement process.

(2) Grantees and subgrantees will conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable statutes expressly mandate or encourage geographic preferences. Nothing in this section preempts State licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criteria provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(3) Grantees must have written selection procedures for procurement transactions. These procedures will ensure that all solicitations:

(i) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description may be used as a means to define the performance or other salient requirements of a procurement. The specific features of the named brand which must be met by offerors shall be clearly stated; and

(ii) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(4) Grantees and subgrantees will ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, grantees and subgrantees will not preclude potential bidders from qualifying during the solicitations period.

(c) Methods of procurement to be followed.

(1) Procurement by micro-purchases procedures. Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed $3,000 (or $2,000 in the case of acquisitions for construction subject to the Davis-Bacon Act). To the extent practicable, the grantee must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the grantee considers the price to be reasonable.

Procurement by small purchase procedures. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the Simplified Acquisition Threshold. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources.

(2) Procurement by sealed bids (formal advertising). Bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the materials terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in 15.2(c)(2)(i) apply.

(i) In order for sealed bidding to be feasible, the following conditions should be present:

(A) A complete, adequate, and realistic specification or purchase description is available;

(B) Two or more responsible bidders are willing and able to compete effectively for the business; and

(C) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(ii) If sealed bids are used, the following requirements apply:

(A) The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for opening the bids;

(B) The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services in order for the bidder to properly respond;

(C) All bids will be publicly opened at the time and place prescribed in the invitation for bids;

(D) A firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs shall be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

(E) Any or all bids may be rejected if there is a sound documented reason.

(3) Procurement by competitive proposal. The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed-price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is use, the following requirements apply:

(i) Requests for proposals will be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical;

(ii) Proposals will be solicited from an adequate number of qualified sources;

(iii) Grantees and subgrantees will have a written method for conducting technical evaluations of the proposals received and for selecting awardees;

(iv) Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and

(v) Grantees and subgrantees may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitor's qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

(4) Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate.

(i) Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals and one of the following circumstances applies:

(A) The item is available only from a single source;

(B) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;

(C) The granting agency authorizes noncompetitive proposal; or

(D) After solicitation of a number of sources, competitive is determined inadequate.

(ii) Cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profit, is required.

(iii) Grantees and subgrantees may be required to submit the proposed procurement to the granting agency for pre-award review in accordance with paragraph (f) of this section.

(d) Contracting with small and minority firms, women's business enterprise and labor surplus area firms.

(1) The grantee and subgrantee will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.

(2) Affirmative steps shall include:

(i) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(ii) Assuring that small and minority business, and women's business enterprises are solicited whenever they are potential sources:

(iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;

(iv) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;

(v) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce; and

(vi) Requiring the prime contractor, if subcontractors are to be let, to take the affirmative steps listed in paragraphs (d)(2) (i) through (v) of this section.

(e) Contract cost and price.

(1) Grantees and subgrantees must perform a cost or price analysis in connection with every procurement action including contract modifications.

The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, grantees must make independent estimates before receiving bids or proposals. A cost analysis must be performed when the offeror is required to submit the elements of his estimated cost, e.g., under professional, consulting, and architectural engineering services contracts. A cost analysis will be necessary when adequate price competition is lacking, and for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation. A price analysis will be used in all other instances to determine the reasonableness of the proposed contract price.

(2) Grantees and subgrantees will 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 will 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.

(3) Cost or prices based on estimated costs for contracts under grants will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles (see Subpart H). Grantees may reference their own cost principles that comply with the applicable Federal cost principles.

(4) The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

(f) Granting agency review.

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

(2) Grantees and subgrantees must on request make available for the granting agency pre-award review procurement documents, such as requests for proposals or invitations for bids, independent cost estimates, etc., when:

(i) A grantee's or subgrantee's procurement procedures or operation fails to comply with the procurement standards in this section; or

(ii) The procurement is expected to exceed $25,000 and is to be awarded without competition or only one bid or offer is received in a response to a solicitation; or

(iii) The procurement, which is expected to exceed $25,000, specifies a "brand name" product; or

(iv) The proposed award over $25,000 is to be awarded to other than the apparent low bidder under a sealed bid procurement; or

(v) A proposed contract modification changes the scope of a contractor or increases the contract amount by more than $25,000.

(3) A grantee or subgrantee will be exempt from the pre-award review in paragraph (f)(2) of this section if the granting agency determines that its procurement systems comply with the standards of this section.

(i) A grantee or subgrantee may request that its procurement system be reviewed by the granting agency to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews shall occur where there is a continuous high-dollar funding, and third-party contracts are awarded on a regular basis;

(ii) A grantee or subgrantee may self-certify its procurement system. Such self-certification shall not limit the granting agency's right to survey the system. Under a self-certification procedure, granting agencies may wish to rely on written assurances from the grantee or subgrantee that it is complying with these standards. A grantee or subgrantee will cite specific procedures, regulations, standards, etc., as being in compliance with these requirements and have its system available for review.

(g) Bonding requirements. For construction or facility improvement contracts or subcontracts exceeding $100,000, the granting agency may accept the bonding policy and requirements of the grantee or subgrantee provided the granting agency has made a determination that the granting agency's interest is adequately protected. If such a determination has not been made the minimum requirements shall be as follows:

(1) A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(2) A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(3) A payment bond on the part of the contractor price. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

(h) Contract provisions. A grantee's and subgrantee's contracts must contain provisions in paragraph (h) of this Section. Granting agencies are permitted to require changes, remedies, changed conditions, access and records retention, suspension of work, and other clauses.

(1) Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. (Contracts other than small purchases)

(2) Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of $10,000)

(3) Compliance with Executive Order 11246 of September 24, 1965 entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967 and as supplemented in Department of Labor regulations (41 CFR Part 60). (All construction contracts awarded in excess of $10,000 by grantees and their contractors or subgrantee)

(4) Compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3). (All contracts and subgrants for construction or repair)

(5) Compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts in excess of $2,000 awarded by grantees and subgrantees when required by Federal grant program legislation)

(6) Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts awarded by grantees and subgrantees in excess of $2,000, and in excess of $2,500 for other contracts which involve the employment of mechanics or laborers)

(7) Notice of granting agency requirements and regulations pertaining to reporting.

(8) Notice of granting agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.

(9) Granting agency requirements and regulations pertaining to copyrights and rights in data.

(10) Access by the grantee, the subgrantee, the Attorney General, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

(11) Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed.

(12) Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clear Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15). (Contracts, subcontracts, and subgrants of amounts in excess of $100,000)

(13) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163).

15.3 Purchase of Real Property

The acquisition of real property by a grantee will be subject to the following policy. The title, disposition and use of real property acquired by the grantee under item (a) below, will be subject to Subpart N, Property. Attachment C shall be used to clearly define the agreement for payment and use of real property related to a grant:

(a) The granting agency may support the costs associated with the acquisition of real property under two basic conditions as specified in this subpart.

(1) Grantee Purchase of Building

(a) The granting agency shall approve the terms and conditions of the purchase agreement (including the type of purchase obligation, interest rates, amount and terms of the agreement). The terms shall represent the most favorable conditions possible to the granting agency including a repayment schedule that demonstrates that the cost to the granting agency is not excessive.

(b) The agreement must explicitly state that the granting agency is held harmless in case of default of the obligation, and to any liabilities occurring as a result of the purchase obligation.

(c) The department shall have use of the property in accordance with the negotiated agreement if its share of the cost (grant funds and program income) represent a portion of the total costs of the acquisition that would in effect represent ownership of the property.

(d) Sale of the property will require prior approval of the granting agency.

(e) Any portion of the property used for non-grant related activities in any current or future period, either during the repayment of the purchase obligation or thereafter, shall be treated as program income and treated according to the terms of the grant.

(f) For the purpose stated in this part, the Department will waive the cost principle prohibiting the charging of interest to a health service grant if the funds used for the purchase are other than an appropriation that precludes the Department Grant Approval Officer from making such determination, i.e. state and federal block funds will allow interest as an allowable cost, Federal categorical funding sources or other awards that prohibit the charging of interest as an allowable cost may not include interest as an allowable cost to the grant.

(b) Purchase by a Holding Company

(1) A separate legal organization may be established to purchase real property that will be used to carry out the terms of a grant, and that would result in a

cost to a grant, if there is in form and substance an "arms length" relationship between the grantee and corporation holding the property. As a minimum the following conditions must be present to indicate that an "arms length" relationship exists:

(a) No member of the holding company, or corporation may serve on the board of directors of the grantee's organization, be an employee of the grantee or a member of the family of a board member or employee of the grantee organization.

(b) Separate legal counsel must represent the grantee and the holding company.

(c) The granting agency may award grant funds or approve the use of program income to cover the usage cost of that portion of the property that will be used to carry out the intent of the grant if it can be determined that this cost will not exceed the fair rental value of comparable property available for the grantee use.

(d) No grant funds or program income earned from the grant may be used to support the "up-front" funding required for the purchase or renovation of the property.

Exceptions to this policy may be authorized by submitting a request with appropriate justification to the Department Grant Approval Officer.

15.4 Construction Grants

This subpart applies to Construction Grants except for those sections that are beyond its scope and intent. (See Subpart D)

SUBPART P - SUBGRANTS

16.1 Subgrants

(a) The grantee shall follow and comply with grant terms and conditions when awarding and administering subgrants of financial assistance. The granting agency shall:

(1) Ensure that every subgrant includes any clauses required by statute and their implementing regulations;

(2) Ensure that subgrantees are aware of requirements imposed upon them by statute and regulation;

(3) Ensure that a provision for compliance with Subpart S, Retention and Access Requirement for Records is placed in every subgrant; and

(4) Conform any advances of grant funds to subgrantees substantially to the same standards of timing and amount that apply to the scheduled cash advances by the granting agency. The DOH Grant Management Officer must approve all Advanced Payments methods for subgrantees.

(5) All grantee Terms and Conditions must be included in the subgrantee's Terms and Conditions.

(6) All subaward agreements must be preapproved in writing by the Program Management Officer and the Grant Management Officer for the subaward to be an allowable cost.

(7) Performance Reports and Financial Reports will use the format approved by the GMO and PMO and within the timeframes identified and approved by the GMO and PMO.

16 .2 Construction Grants

This subpart applies to Construction Grants except for those sections that are beyond its scope and intent. (See Subpart D)

SUBPART Q - MONITORING AND REPORTING PROGRAM PERFORMANCE

17.1 Monitoring by grantees

Grantees are responsible for managing the day-to-day operations of grant and subgrant supported activities. Grantees must monitor grant and subgrant supported activities to assure compliance with applicable requirements and that performance goals are being achieved. Grantee monitoring must cover each program, function or activity.

17.2 Performance reports

(a) The granting agency shall determine the performance information and forms required. This information is included in the grant award document (Attachment A) and will be due as determined by the grant.

(b) The content of performance reports shall conform to any instructions issued by the granting agency, including, to the extent appropriate to the particular grant, a brief presentation of the following for each program, function, or activity involved:

(1) A comparison of actual accomplishments to the goals established for the period. Where the output of the project or program can be readily expressed in numbers, a computation of the cost per unit of output may be required if that information will be useful.

(2) The reasons for slippage if established goals were not met.

(3) Other pertinent information including, when appropriate, analysis and explanation of unexpectedly high overall or unit costs.

(c) At a minimum a performance report will be submitted upon expiration or termination of grant support.

17.3 Significant developments between scheduled reporting dates

Between the scheduled performance reporting dates, events may occur which have significant impact upon the grant- or subgrant-supported activity. In such cases, the recipient shall inform the granting agency as soon as the following types of conditions become known:

(a) Problems, delays, or adverse conditions which will materially impair the ability to attain the objective of the award. This disclosure shall be accompanied by a statement of the action taken, or contemplated, and any assistance needed to resolve the situation.

(b) Favorable developments which enable meeting time schedules and goals sooner or at less cost than anticipated or producing more beneficial results than originally projected.

17.4 Site visits

Site visits may be made as deemed necessary by representatives of the Department to:

(a) Review program accomplishments and management control systems.

(b) Provide such technical assistance as may be required.

(c) Conduct monitoring of program activities and records to ensure compliance with the grant deliverables and conditions.

17.5 Submission of reports

(a) Non-construction performance reports

(1) The report will be due on the dates shown in the grant award (Attachment A). The final progress report will be due on the same date as the Final Report of Grant Expenditures. Unless otherwise stated in Attachment A, reports shall be due ten (10) working days after the reporting period and final reports shall be due no later than sixty (60) days after the expiration or termination of grant support. Reports are to be submitted electronically.

(2) If a justified request is submitted by the grantee, the granting agency may extend the due date for any performance report.

(b) Construction performance report

(1) For the most part, on-site technical inspections and certified percentage-of-completion data are relied on heavily to monitor progress under construction grants and subgrants. The granting agency will require additional formal performance reports only when considered necessary, and never more frequently than quarterly. (See Subpart D)

(2) The granting agency may make site visits as warranted by program needs.

(c) Waivers and extensions

(1) The granting agency may waive any performance report required by this part if not needed.

(2) The grantee may waive any performance report from a subgrantee when not needed. The grantee may extend the due date for any performance report from a subgrantee if the grantee will still be able to meet its performance reporting obligations.

17.6 Construction Grants

This subpart applies to Construction Grants except for those sections that are beyond its scope and intent. (See Subpart D)

SUBPART R - FINANCIAL REPORTING

18.1 Scope and applicability of subpart

(a) This subpart prescribes requirements for grantees to report financial information.

(b) Grantees are not required to use the forms prescribed in this subpart in dealing with their subgrantees. However, grantees require financial reporting from the subgrantees but shall not impose more burdensome requirements on subgrantees.

18.2 General

(a) The grantee shall submit Report of Grant Expenditures comparing actual expenditures with the approved budget. These reports are to be submitted electronically on a periodic basis as prescribed in Attachment A of the grant.

(b) When a granting agency has determined that a grantee's accounting system does not meet the standards for financial management systems contained in Subpart E, it may require financial reports with more frequency or more details, or both, upon written notice to the grantee.

(c) Granting agencies may extend the due date of any financial report upon receiving a justified request from the grantee.

(d) The granting agency may accept the required information electronically from grantees or in machine usable format or computer printouts in lieu of the prescribed forms with prior approval of the Grant Management Officer.

18.3 Report of grant expenditures

(a) Forms. Grantees shall use a standard form, Report of Grant Expenditures and a status of cash report, if required, for all grants. The report is to be submitted electronically to the Grants Management Officer.

(b) Accounting basis. Each grantee shall report program expenditures and program income on the same accounting basis, i.e., cash or accrued expenditures, which it uses in its accounting system. If the granting agency requires accrual information and the grantees accounting records are not normally kept on the accrual basis, the grantee shall not be required to convert its accounting system but shall develop such accrual information through an analysis of the documentation on hand.

(c) Frequency. See Attachment A of the Health Service Grant for the frequency of the report. A final report shall be required upon expiration or termination of the grant support.

(d) Reports shall be due ten (10) working days after the reporting period. Final reports shall be due no later than sixty (60) days after the expiration or termination of grant support. Reports are to be submitted electronically to the Grant Management Officer.

18.4 Construction Grants

This subpart applies to Construction Grants except for those sections that are beyond its scope and intent. (See Subpart D)

SUBPART S - RETENTION AND ACCESS REQUIREMENTS FOR RECORDS

19.1 Applicability

(a) This subpart applies to all financial and programmatic records, supporting documents, statistical records and other records of grantees or subgrantees which are:

(1) Required to be maintained by terms of this subpart, program regulations or the grant agreement;

(2) Otherwise reasonably considered as pertinent to program regulations or the grant agreement.

(b) This section does not apply to records maintained by contractors or subcontractors.

19.2 Length of retention period

(a) Except as otherwise provided, records must be retained for 3 years from the starting date specified in 19.3 of this subpart.

(b) If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the 3-year period, the records shall be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular 3-year period, whichever is later.

(c) To avoid duplicate recordkeeping, the granting agency may make special arrangements with grantees and subgrantees to retain any records which are continuously needed for joint use. The granting agency will request transfer of records to its custody when it determines that the records possess long-term retention value. When the records are transferred to or maintained by the granting agency the 3-year retention requirement is not applicable to the grantee or subgrantee.

19.3 Starting date of retention period

(a) General

(1) Where grant support is continued or renewed at annual or other intervals, the retention period for the records of each project period starts on the day the grantee or subgrantee submits to the granting agency its final expenditure report for that period.

(2) Exceptions to this paragraph are contained in paragraphs (b) through (d) of this section.

(b) Real property and equipment records

The retention period for real property and equipment records starts from the date of disposition or replacement or transfer at the direction of the granting agency.

(c) Records for income transactions after grant or subgrant support.

(1) In some cases grantees must report income after the period of grant support. Where there is such a requirement the retention period for the records pertaining to the earning of the income starts from the end of the grantees fiscal year in which the costs is earned.

(d) Indirect cost rate proposals, cost allocation plans, etc.

(1) This paragraph applies to the following types of documents, and their supporting records:

(a) Indirect cost rate computations or proposals;

(b) Cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

(2) If submitted for negotiation.

If the proposal, plan, or other computation is required to be submitted to the granting agency (or to the Federal Government) to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts from the date of such submission.

(3) If not submitted for negotiation

If the proposal, plan, or other computation is not required to be submitted to the granting agency for negotiation purposes, then the 3-year retention period for the proposal, plan, or computation and its supporting records starts from the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

19.4 Substitution of original records

Copies made by microfilming and photocopy methods may be substituted for the original records.

19.5 Access to records

(a) Records of grantees and subgrantees

Department of Health, Federal agencies, the State Auditor and the Comptroller General of the United States, or any of their authorized representatives, shall have the right of access to any books, documents, papers, or other records of the grantee which are pertinent to the grant, in order to make audit, examination, excerpts, and transcripts.

(b) Expiration of right of access

The rights of access in this section shall not be limited to the required retention period but shall last as long as the records are retained.

19.6 Restrictions on public access

The Federal Freedom of Information Act (5 U.S.C. 552) does not apply to records unless required by Federal, State or local law, grantees and subgrantees are not required to permit public access to their records.

19.7 Construction Grants

This subpart applies to Construction Grants except for those sections that are beyond its scope and intent. (See Subpart D)

SUBPART T - ENFORCEMENT

20.1 Enforcement

(a) Remedies for noncompliance. If a grantee or subgrantee materially fails to comply with any term of an award, whether stated in a statute or regulation, an assurance, in a State plan or application, a notice of award, or elsewhere, the granting agency may take one or more of the following actions, as appropriate in the circumstances:

(1) Temporarily withhold cash payments pending correction of the deficiency by the grantee or subgrantee or more severe enforcement action by the awarding agency,

(2) Disallow (that is, deny both use of funds and matching credit for) all or part of the cost of the activity or action not in compliance,

(3) Wholly or partly suspend or terminate the current award for the grantee's or subgrantee's program, effective date of suspension or termination, are not in anticipation of it, and, in the case of a termination, are noncancellable, and,

(2) The costs would be allowable if the award were not suspended or expired normally at the end of the budget period in which the termination takes effect.

20.2 Termination for convenience

Except as provided in Subpart 20.1 awards may be terminated in whole or in part only as follows:

(a) By the granting agency with the consent of the grantee or subgrantee in which case the two parties shall agree upon the termination conditions, including the effective date and in the case of partial termination, the portion to be terminated, or

(4) Withhold further awards for the program, or

(5) Take other remedies that may be legally available.

(b) Hearings, appeals. In taking an enforcement action, the granting agency will provide the grantee or subgrantee an opportunity for such hearing, appeal, or other administrative proceeding to which the grantee or subgrantee is entitled. (see Subpart 1.3)

(c) Effects of suspension and termination. Costs of grantee or subgrantee resulting from obligations incurred by the grantee or subgrantee during a suspension or after termination of an award are not allowable unless the granting agency expressly authorizes them in the notice of suspension or termination or subsequently. Other grantee or subgrantee costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if:

(1) The costs result from obligations which were properly incurred by the grantee or subgrantee before the

(b) By the grantee or subgrantee upon written notification to the granting agency, setting forth the reasons for such termination, the effective date, and in the case of partial termination, the portion to be terminated. However, if, in the case of a partial termination, the granting agency determines that the remaining portion of the award will not accomplish the purposes for which the award was made, the granting agency may terminate the award in its entirety under either Subpart 20.1 or paragraph (a) of this section.

20.3 Construction Grants

This subpart applies to Construction Grants except for those sections that are beyond its scope and intent. (See Subpart D)

SUBPART U - AFTER-THE-GRANT-REQUIREMENTS

21.1 Closeout

(a) General. The granting agency will close out the award after each budget period when it determines that all applicable administrative actions and all required work of the grant has been completed. Each grant shall be closed out as promptly as is feasible after expiration or termination.

(b) In closing out grants the following shall be observed:

(1) Upon request by the granting agency shall promptly pay the grantee for any allowable reimbursable costs not covered by previous payment.

(2) The grantee shall immediately refund or otherwise dispose of, in accordance with instructions from the granting agency, any unobligated balance of cash advanced to the grantee.

(c) Reports. Final reports are due no later than sixty (60) days after the expiration or termination of the grant, the grantee must submit all financial, performance, and other reports required as a condition of the grant to the granting agency. Upon request by the grantee, the granting agency may extend this timeframe. These may include but are not limited to:

(1) Final Report of Grant Expenditures;

(2) Final State Invoice, if necessary;

(3) Program Income Statement, if applicable;

(4) Grantee Progress Report;

(5) Statements of equipment inventory, if applicable;

(6) Statements of copyright and royalties, if applicable;

(7) Loaned property report: In accordance with Subpart N, a grantee must submit an inventory of all property (as distinct from property acquired with grant funds) for which it is accountable and request disposition instructions from the granting agency of property no longer needed.

(d) Cash adjustments.

(1) The granting agency will make prompt payment to the grantee for allowable reimbursable costs.

(2) The grantee must immediately refund to the granting agency any balance of unobligated (unencumbered) cash advanced that is not authorized to be retained for use on other grants.

(3) When a grantee or subgrantee receives payments in excess of the expenditures a refund must be submitted at the time the final Report of Grant Expenditures is processed. The check is drawn to "Treasurer, State of New Jersey" and mailed to the GMO for appropriate posting.

21.2 Later disallowances and adjustments

The closeout of a grant does not affect:

(a) The granting agency's right to disallow costs and recover funds on the basis of a later audit or other review;

(b) The grantee's obligation to return any funds due as a result of later refunds, corrections, or other transactions;

(c) The grantee's responsibilities with respect to property under Subpart N;

(d) Audit requirements in Subpart L;

(e) The retention period for, or rights of access to, grant records under Subpart S;

(f) Program income for which the grantee is still accountable under Subpart K.

21.3 Amounts payable to the Department

For each grant, the following sums shall constitute a debt or debts owed by the grantee and shall, if not paid upon demand, be recovered from the grantee or its successor or assignees by setoff or other action as provided by law:

(a) Any grant funds paid to the grantee by the State of New Jersey in excess of the amount which the grantee is finally determined to be entitled under the terms of the grant;

(b) Any interest or other investment income earned on advances of grant funds which is due pursuant to 11.7;

(c) Any royalties or other special classes of program income which, under the terms of the grant, are required to be remitted to the granting agency (see Subpart K);

(d) Any amounts due under Subpart N; and

(e) Any other amounts finally determined to be due to the State of New Jersey under the terms of the grant.

(f) The check is drawn to "Treasurer, State of New Jersey" and mailed to the GMO for appropriate posting.

21.4 Remedies for non-compliance

(a) If a grantee or subgrantee materially fails to comply with any terms of an award, whether stated in Federal or State statute or regulation, an assurance, in a plan or application, a notice of award or elsewhere, the granting agency may take one or more of the following actions:

(1) Suspend the grant, in accordance with Subpart T, terminate the grant for cause, as provided in Subpart T; or

(2) Take such other remedies as may be legally available and appropriate in the circumstances.

(b) If a project or program is supported over two or more budget periods, a grant may be suspended or terminated in the current period for failure to submit a report still due from a prior period.

21.5 Collection of amounts due

(a) Any funds paid to a grantee in excess of the amount to which the grantee is finally determined to be entitled under the terms of the award constitute a debt to the State Government. If not paid within a reasonable period after demand, the granting agency may reduce the debt by:

(1) Making an administrative offset against other requests for reimbursements,

(2) Withholding advance payments otherwise due to the grantee, or

(3) Other action permitted by law.

(b) Except where otherwise provided by statutes or regulations, the State agency will charge interest on an overdue debt in accordance with Department Policy. The date from which interest is computed is not extended by litigation or the filing of any form of appeal.

(c) Charges for Unresolved Audit Findings-An interest charge on unallowable costs that are not repaid by the grantee shall begin to accrue 30 days from the date the grantee is notified of the debt. The interest shall continue to accrue while any appeal of the audit findings is underway. In the event the grantee is successful in its appeal, the accrued interest will be eliminated. The interest rate applied shall be prescribed by the Department of Treasury at the date the penalty is assessed.

21.6 Applicability to subgrants

Grantees shall adhere to the same standards regarding closeout as prescribed in this subpart for the subgrantee.

21.7 Construction Grants

This subpart applies to Construction Grants except for those sections that are beyond its scope and intent. (See Subpart D)